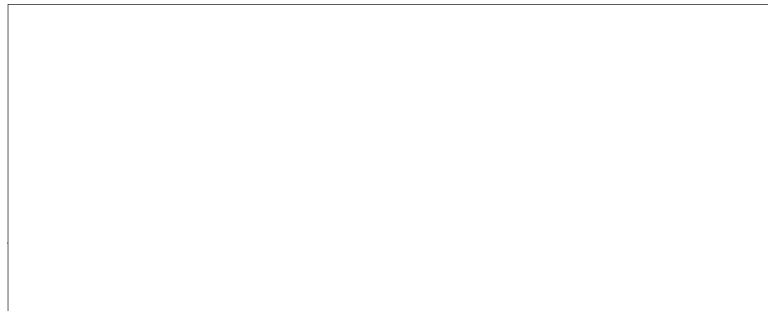
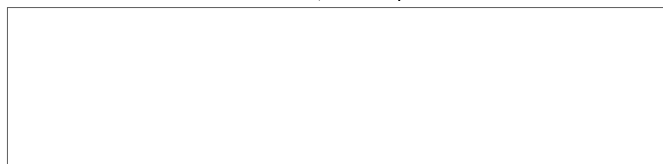


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SPECIFICATIONS
FOR
PAINTING OF WAREHOUSE FACILITY
AND OTHER RELATED STRUCTURES

LOCATED AT



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SPECIFICATION NO:

DATE: 10 May 1978

NOTICE:
Bids to be opened at
2:00 pm, EDST,

SPECIFICATION

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The Contractor shall follow the provisions set forth in the specifications and all applicable regulations and orders of Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to perform this contract.

All questions concerning the bidding or any other phase of the plans and specifications occurring prior to bid opening shall be presented to the Public Works Officer (Telephone:)

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Questions requiring interpretations of drawings and specifications must be submitted at least 7 days before bid opening. Interpretations or modifications to specifications made as a result of questions will be made by addendum only, and unless so done, all bidders should base their bids on the plans and specifications as issued.

To inspect the site of the work before bid opening, prior appointment must be made with the Public Works Officer,

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Tel.

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BIDDING INFORMATION

Section 1A

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SECTION 1A

Bidding Information

1. GENERAL INTENTION

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It is the declared and acknowledged intention and meaning of these specifications to provide and secure the exterior painting [redacted] and adjoining structures complete and ready for use.

2. GENERAL DESCRIPTION

The work includes the painting of the Warehouse Building, Supply Annex, Steel Lumber Storage Shed (Interior and Exterior), Bottled Gas Storage Shed, Loading Platform Roof, Firewalls on Roof and incidental related work as required.

The work shall be complete. The contractor shall furnish labor, material, equipment, tools, supplies and services, and perform all operations necessary for or incidental to a complete project in conformity with these specifications.

3. LOCATION

The work shall be located at the [redacted] [redacted] The exact location will be indicated by the Public Works Officer.

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4. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

The contractor will be required to commence work under this contract within 20 calendar days after the date of receipt by him of notice to proceed, to prosecute said work diligently, and to complete the entire work ready for use within 60 days without any lapse of time except for weather conditions. The time stated for completion shall include final clean-up of premises.

5. RESERVED

6. NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (1972 Jul)

(a) RESTRICTION. Offers under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(b) DEFINITION. A "Small Business Concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: PROVIDED, that this additional requirement does not apply in connection with construction or service contracts.

7. DEFINITION OF SMALL BUSINESS

For procurement, a small business concern is a concern that is certified as a small business concern by the Small Business Administration, and as a Special Trade Contractor, the annual receipts of the concern and its affiliates for the preceding three fiscal years must not exceed \$5,000.000.

8. LIQUIDATED DAMAGES

In case of failure on the part of the contractor to complete the work within the time fixed in the contract or any extensions thereof, the contractor shall pay to the Government as liquidated damages pursuant to Clause 5 of Standard Form 23-A the sum of \$12.00 for each day of delay. The Government will take no action pursuant to Clause 5 to terminate the right of the Contractor to proceed or to assess liquidated or actual damage where the failures of the contractor to complete the work within the time specified elsewhere in this contract is due solely to the operation of the priorities and allocations system and is not otherwise caused by the fault or negligence of the contractor. Such delays will be excusable within the meaning of Clause 5 and the Contractor will be entitled to a time extension by reason thereof.

9. MANDATORY INSURANCE COVERAGE

Within 15 days after the award of this contract, the successful bidder shall furnish to the Public Works Officer, Armed Forces Experimental Training Activity, a certificate of insurance as evidence of the existence of insurance coverage in amounts not less than the amount listed in "Alterations to General Provisions" page 4.

The comprehensive and automobile liability policies shall contain a provision worded as follows: "The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy." The certificate of all policies shall provide for notice of cancellation to the Public Works Officer, [redacted] and the certificates shall indicate that the above provision has been included.

10. SPECIFICATIONS AND STANDARDS

The specifications and standards referenced in this specification (including addenda, amendments, and errata listed) shall govern in all cases where references thereto are made. In cases of difference between the referenced

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specifications or standards and this specification or its accompanying drawings, this specification and its accompanying drawings shall govern to the extent of such difference; otherwise, the referenced specifications and standards should apply. The requirements for packaging, marking, and preparation for shipment or delivery included in the referenced specifications shall apply only to materials and equipment that are furnished directly to the Government and not to materials and equipment that are to be furnished and installed by the contractor. Unless specified otherwise in this specification, the requirements included in referenced specifications are modified as follows:

Radio-interference suppression: Not required.

Fungus Control: Not required

Identification or name plate: Manufacturer's standard acceptable.

Technical publications: In lieu of tests performed on a production test model, such test, if required at the manufacturer's plant, shall be performed on the equipment being furnished under this specification.

11. FACTORY INSPECTION

Factory inspection of material and equipment for which tests at the place of manufacture are required by referenced standards will be waived, provided notarized copies of factory tests reports are furnished which show compliance with the specification requirements.

12. SAMPLES

The contractor shall submit, for approval, samples of the following and of such other materials and equipment as may be required whether mentioned specifically herein or not:

Paint

13. SPECIAL REQUIREMENTS

- (a) The contractor shall abide by all security requirements of the Activity.
- (b) Once work has begun, it shall proceed uninterrupted to completion unless halted by the Public Works Officer or his designated representative.
- (c) The contractor shall notify the Public Works Officer [] at least 7 days in advance of planned operations.
- (d) To inspect the site of work before bid opening, prior appointment must be made with the Public Works Officer, []

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14. PERSONNEL REQUIREMENTS

The contractor and all personnel employed by him shall be fully qualified and experienced in their particular field of work. Full name, date, place of birth, and current address of each employee shall be supplied to the Public Works Officer, [] five (5) days prior to start of work.

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15. SECURITY REQUIREMENTS

No employee or representative of the contractor will be admitted to the site unless he furnishes satisfactory proof that he is a citizen of the United States. This Activity operates under strict security regulations and all persons admitted to the Activity must be accompanied by an official escort, designated by the Activity's Security Officer, at all times. The Security Officer may authorize issuance of badges to selected responsible employees of the Contractor, which will permit the person issued the badge to act as escort for other contractor personnel.

16. MINIMUM WAGE RATES AND OTHER LABOR STANDARDS

The provisions of this paragraph do not apply when the contract amount is \$2,000 or less. The contractor shall pay mechanics and laborers employed or working directly upon the site of the work, wage rates not less than those contained in the wage determination decision of the Secretary of Labor, No. VA77-3091, which is attached hereto.

17. DEFINITIONS

Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that reference is made to the drawings accompanying this specification unless stated otherwise. Where "as directed", "as required", "as permitted", "approved", "acceptance", or words of similar import are used, it shall be understood that the direction, requirement, permission, approval or acceptance of the Public Works Officer is intended unless stated otherwise. As used in this specification "provide" shall be understood to mean "provide complete in place", that is, "furnish and install".

18. PROTECTION AND REPAIRS

The contractor shall comply with the fire prevention requirements, security rules and regulations of the Activity, and shall provide approved means necessary for the protection of all Government and private property, including contents of buildings affected directly or indirectly by his operations. All damage to Government or private property, resulting directly or indirectly from the contractor's operations shall be made good by him without expense to the Government. The contractor shall protect the materials and work from deterioration and damage during construction and shall store and secure inflammable material from fire, remove oil rags, waste and refuse from building each night and during cold weather furnish all heat necessary for the proper conduct of work. He shall provide and maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals, and other devices necessary to provide for safety and traffic.

19. OPERATION OF STATION UTILITIES

The contractor shall not operate nor disturb the setting of any control devices in the station utilities system, including water, sewer, electrical

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and steam services. The Government will operate the control devices as required for normal conduct of work. The contractor shall notify the Public Works Officer giving reasonable advance notice when such operation is required.

20. STORM PROTECTION

Should warnings of winds of gale force or stronger be issued, the contractor shall take every practicable precaution to minimize danger to persons, to the work, and to adjacent property. These precautions shall include closing all openings, removing all loose materials, tools and/or equipment from exposed locations, and removing or securing scaffolding and other temporary work.

21. DISPOSAL OF WORK REMOVED

Except where specifically designated as being retained by the Government, or to be reinstalled in the new construction, all materials, fixed equipment and/or debris resulting from demolition and removal operations shall become the property of the contractor and be removed from the limits of the Government reservation at such times during the progress of the work as directed.

22. METHODS AND SCHEDULES OF PROCEDURE

The work shall be executed in a manner and at such times that will cause the least practicable disturbance to the occupants of the buildings and the normal activities of the station. Before starting any work, the sequence of operations and methods of conducting the work shall have been approved.

23. WORK OUTSIDE REGULAR HOURS

Normal working hours at this Activity are 0800 to 1630 hours Monday through Friday. If the contractor desires to carry on work outside of regular hours or on Saturdays, Sundays, or Holidays, he shall submit application to the Public Works Officer, but shall allow ample time to enable satisfactory arrangements to be made by the Government for inspecting the work in progress. At night, he shall light the different parts of the work in an approved manner.

24. SAFETY REQUIREMENTS

The contractor shall comply with the Department of the Army, Corps of Engineers, "General Safety Requirements," revised March, 1967. The contractor and his subcontractors shall maintain an accurate record of, and shall report to the Officer in Charge, exposure data and all accidents resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, and equipment incident to work performed under this contract. The report shall be submitted on Standard Form 92 and shall be in accordance with "Instructions to Contractor for Preparation of Supervisor's Reports of Accidents", the "Instructions" and the required forms will be furnished by the Officer in Charge.

25. EXAMINATION OF PREMISES

Before submitting proposals, bidders are expected to visit and inspect the site of work and satisfy themselves as to the physical conditions at the site, the general and local conditions, including availability of labor, the nature and extent of the work, the character and effect of existing adjoining and/or adjacent work, and other factors that can affect the cost of the performance of the contract to the extent that such information is reasonably obtainable.

26. PAYROLLS AND AFFIDAVITS

The prime contractor, subcontractor, and sub-subcontractors will be required to submit a copy of each weekly payroll together with DD Form 879, Contractors Weekly Payroll Statement, covering the payroll to the Officer in Charge of Construction within seven (7) days after the regular payment date of the payroll period. The receipt of these payrolls and statements is made a condition precedent to payment for any amounts due under the contract.

27. PAYROLL

The payroll shall be identified by the name of the contractor, contract number, and the location of the site of the work. Payrolls shall state accurately and completely for each employee, his name, classification, social security number, rate of pay, daily and weekly hours worked, wages earned, all deductions from such wages and the actual weekly wages paid. Contractors are required to submit employee's address with the payroll on which the employee's name first appears.

28. CONTRACTORS WEEKLY STATEMENT OF COMPLIANCE

Contractors weekly statement of compliance shall be executed on the form furnished for the purpose by the Officer in Charge. Contractors shall list by title or name, all deductions made, omitting from the listing the dollar amount of the deductions.

29. SUBCONTRACTORS AND PERSONNEL

Promptly after the award of the contract, the contractor shall submit to the Officer in Charge, in triplicate, a list of his subcontractors and the work each is to perform. On this form shall appear the names of the key personnel of the contractor and subcontractors together with their home addresses and telephone numbers for use in the event of any emergency. From time to time as changes occur and additional information becomes available, the contractor shall amplify, correct, and change the information contained in previous lists.

SECTION 2A

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April 1977

INSTRUCTIONS TO BIDDERS
(Construction Contract)

(Instructions 1 through 11 are those prescribed by the General Services Administration in Standard Form 22, October 1969 Edition, as amended pursuant to the latest revisions of the Armed Services Procurement Regulation.)

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April 1977

INSTRUCTIONS TO BIDDERS (Construction Contract)

(Instructions 1 through 11 are those prescribed by the General Services Administration in Standard Form 22, October 1969 Edition, as amended pursuant to the latest revisions of the Armed Services Procurement Regulation.)

1. EXPLANATIONS TO BIDDERS

Any explanation desired by a bidder regarding the meaning or interpretation of the invitation for bids, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach bidders before the submission of their bids. Any interpretation made will be in the form of an amendment of the invitation for bids, drawings, specifications, etc., and will be furnished to all prospective bidders. Its receipt by the bidder must be acknowledged in the space provided on the Bid Form (Standard Form 21) or by letter or telegram received before the time set for opening of bids. Oral explanations or instructions given before the award of the contract will not be binding.

2. CONDITIONS AFFECTING THE WORK

Bidders should visit the site and take such other steps as may be reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Failure to do so will not relieve bidders from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Government will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the contract, unless included in the invitation for bids, the specifications, or related documents.

3. BIDDER'S QUALIFICATIONS

Before a bid is considered for award, the bidder may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

4. BID GUARANTEE

Where a bid guarantee is required by the invitation for bids, failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

A bid guarantee shall be in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or in accordance with Treasury Department regulations, certain bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (a) to unsuccessful bidders as soon as practicable after the opening of bids, and (b) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bids as accepted.

If the successful bidder, upon acceptance of his bid by the Government within the period specified therein for acceptance (sixty days if no period is specified) fails to execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (ten days if no period is specified) after receipt of the

forms by him, his contract may be terminated for default. In such event he shall be liable for any cost of procuring the work which exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

5. PREPARATION OF BIDS

(a) Bids shall be submitted on the forms furnished, or copies thereof, and must be manually signed. If erasures or other changes appear on the forms, each erasure or change must be initialed by the person signing the bid. Unless specifically authorized in the invitation for bids, telegraphic bids will not be considered.

(b) The bid form may provide for submission of a price or prices for one or more items, which may be lump sum bids, alternate prices, scheduled items resulting in a bid on a unit of construction or a combination thereof, etc. Where the bid form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid. When submission of a price on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(c) Unless called for, alternate bids will not be considered.

(d) Modifications of bids already submitted will be considered if received at the office designated in the invitation for bids by the time set for opening of bids. Telegraphic modifications will be considered, but should not reveal the amount of the original or revised bid.

6. SUBMISSION OF BIDS

Bids must be sealed, marked, and addressed as directed in the invitation for bids. Failure to do so may result in a premature opening of, or a failure to open, such bid.

7. LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1974 SEP)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(i) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or,

(ii) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above except that withdrawal of bids by telegram is authorized. A bid may also be withdrawn in person

Instructions to Bidders—April 1977

by a bidder or his authorized representative, *provided* his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids.

(c) The only acceptable evidence to establish:

(i) the date of mailing of a late bid, modification or withdrawal sent either by registered or certified mail is the U.S. Postal Service Postmark on the wrapper or on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service.)

(ii) the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding the above, a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted. **NOTE:** The term "Telegram" includes Mailgrams

8. RESERVED

9. PUBLIC OPENING OF BIDS

Bids will be publicly opened at the time set for opening in the invitation for bids. Their content will be made public for the information of bidders and others interested, who may be present either in person or by representative.

10. AWARD OF CONTRACT

(a) Award of contract will be made to that responsible bidder whose bid, conforming to the invitation for bids, is most advantageous to the Government, price and other factors considered.

(b) The Government may, when in its interest, reject any or all bids or waive any informality in bids received.

(c) The Government may accept any item or combination of items of a bid, unless precluded by the invitation for bids or the bidder includes in his bid a restrictive limitation.

11. CONTRACT AND BONDS

The bidder whose bid is accepted will, within the time established in the bid, enter into a written contract with the Government and, if required, furnish performance and payment bonds on Government standard forms in the amounts indicated in the invitation for bids or the specifications.

12. BID SUBMISSION

Bids shall be submitted only upon the items of bids stated in the specifications; bids upon other bases will not be considered unless specifically requested by the Government. Bids that do not reference all amendments or that are not submitted on the

prescribed forms may be considered nonconforming. The Officer whose duty it is to open the bids will decide when the specified time has arrived, and no bids (or modification or withdrawal of bid) will be considered if received by the Navy after the reading of the bids has begun except as provided in the "Late Bids and Modifications or Withdrawals" provisions of this invitation. Discrepancies, ambiguities, errors, or omissions to the bidding data should be reported promptly to the office from which the data were obtained.

13. BID GUARANTY

(Applicable only to bids of \$2,000 or more.) To assure the execution of the contract and the performance and payment bonds, each bidder shall submit with its bid a guaranty bond (Standard Form 24) executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety, or other security as provided in paragraph 4 of Instructions to Bidders. Security shall be in the sum of 20 percent of the largest amount for which award can be made under the bid submitted, but in no case to exceed \$3,000,000. The bid guaranty bond shall be accompanied by a verifax or other facsimile copy of the agent's authority to sign bonds for the surety company.

14. CONTRACT AND BONDS

(Applicable only to bids of \$2,000 or more.) Within 10 days after the prescribed forms are presented to him for signature, the bidder to whom award is made shall enter into a written contract on the form prescribed by the specification and shall furnish two bonds, each with satisfactory security; namely, a performance bond (Standard Form 25) and a payment bond (Standard Form 25A). The performance bond shall be in a penal sum equal to 100 percent of the contract price. The payment bond shall be equal to 50 percent of the contract price, except that it shall be 40 percent of the contract price if that price is more than \$1,000,000 and not more than \$5,000,000, and in the fixed sum of \$2,500,000 if the contract price is more than \$5,000,000. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds will be accepted. Individual sureties will be accepted if each such surety deposits with the Contracting Officer cash, bonds, or notes of the United States, or certified check drawn to the order of the Treasurer of the United States, or such other security as the Contracting Officer may deem necessary for the required amount of the guaranty, under the agreement that the collateral so deposited shall remain in the possession and control of the Treasurer of the United States for at least one year after the completion of the contract. The contract time for purposes of fixing the completion date, default, and liquidated damages shall begin to run 15 days from the mailing of acceptance, regardless of when the formal contract and bonds are executed.

15. NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE WHICH MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION

16. NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION

Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render

Instructions to Bidders—April 1977

his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause. (1969 JAN)

17. LISTING OF EMPLOYMENT OPENINGS

Offerors should note that this solicitation includes a provision which will be included in the contract requiring the listing of employment openings with the local office of the State employment service system if the award is for \$2,500 or more.

18. COST LIMITATIONS

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation include an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (ii) exceed the cost limitations unless such limitations have been waived by the Assistant Secretary of Defense (Installations and Logistics) prior to award.

19. BIDS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS INVITATION FOR BIDS (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN BIDS IS PRESCRIBED IN 18 U.S.C. 1001**20. BIDS—ACCEPTANCE PERIOD (1960 APR)**

Bids offering less than the period of days specified for acceptance by the Government from the date set for opening of bids will be considered nonresponsive and will be rejected.

21. ADDITIVE OR DEDUCTIVE ITEMS (1968 APR)

If this invitation includes more than one bid item, the following clause applies.

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is \$100,000, and a bidder's base bid and four successive additives are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of award would be \$99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed \$100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid

and any combination of his additive or deductive bid for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

22. SPECIAL PROVISIONS—SF 19

If the successful bid exceeds \$10,000 and the contract is to be executed on Standard Form 19, the clauses set forth in the current Armed Services Procurement Regulation, paragraphs 11-401.1(b) (Federal, State, and Local Taxes) and 12-804(a) (Equal Opportunity) apply.

23. MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS

The right is reserved, as the interest of the Government may require, to revise or amend the specifications or drawings or both prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Invitation for Bids. If the revisions and amendments are of a nature which requires material changes in quantities or prices to be bid or both, the date set for opening bids may be postponed by such number of days as in the opinion of the issuing officer will enable bidders to revise their bids. In such cases, the amendment will include an announcement of the new date for opening bids.

24. PARENT COMPANY

A parent company for the purpose of this offer is a company which either owns or controls the activities and basic business policies of the offeror. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the offeror, such other company is considered the parent company of the offeror. This control may be exercised through the use of dominating minority voting rights, use of proxy voting, contractual arrangements or otherwise.

25. EMPLOYER'S IDENTIFICATION NUMBER

(Applicable only to advertised solicitations.) The offeror shall insert in the applicable space on the offer form, if he has no parent company, his own Employer's Identification Number (E.I. No.) (Federal Social Security Number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941), or, if he has a parent company, the Employer's Identification Number of his parent company.

26. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) This certification on the offer form is not applicable to a foreign offeror submitting an offer for a contract which requires performance of delivery outside the United States, its possessions, and Puerto Rico.

(b) An offer will not be considered for award where (a)(1), (a)(3), or (b) of the certification has been deleted or

The General Provisions (1-77) are hereby modified as follows:

- a. In the table of contents under 22. ADDITIONAL BOND SECURITY delete (1975 OCT) and substitute (1976 OCT) therefor.
- b. In the table of contents under 45. ACCIDENT PREVENTION delete (1967 JUN) and substitute (1977 JUN) therefor.
Clause 45 ACCIDENT PREVENTION (1967 JUN) is hereby deleted and new Clause 45 ACCIDENT PREVENTION (1977 JUN) attached hereto is substituted therefor.
- c. In the table of contents under 66, VALUE ENGINEERING INCENTIVE, delete (1974 APR) and substitute (1977 AUG) therefor.
Clause 66 VALUE ENGINEERING INCENTIVE (1974 APR) is hereby deleted and new Clause 66 VALUE ENGINEERING INCENTIVE (1977 AUG) attached hereto is substituted therefor.
- d. In the table of contents under 68. REQUIRED INSURANCE, delete (1963 APR) and substitute (1977 JAN) therefor.
Clause 68 REQUIRED INSURANCE (1968 APR) is hereby deleted and new Clause 68 REQUIRED INSURANCE (1977 JAN) attached hereto is substituted therefor.
- e. In the table of contents under 79. CONTRACTOR QUALITY CONTROL (CQC), delete (6-72) and substitute (4-77) therefor.
Clause 79 CONTRACTOR QUALITY CONTROL (CQC) (6-72) is hereby deleted and new Clause 79 CONTRACTOR QUALITY CONTROL (CQC) (4-77) attached hereto is substituted therefor.

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and for other persons for prevention of disease in connection with this contract, the Contractor shall comply with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1, dated 1 June 1977, entitled "General Safety Requirements", as amended, and will also take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for the purpose.

(b) The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to work performed under this contract.

(c) The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

(d) Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

If the contract involves more than 6 months work or is described as hazardous character in the Invitation for Bids, Schedule, or Specifications, the following paragraph (e) will apply.

(e) Prior to commencement of the work the Contractor will:

(1) submit in writing his proposals for effectuating this provision for accident prevention;

(2) meet in conference with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the over-all safety program. (ASPR 7-602.42)

66.

VALUE ENGINEERING INCENTIVE (1977 AUG)

(a) Application. This clause applies to a Contractor developed and documented Value Engineering Change Proposal (VECP) which:

- (i) requires a change to this contract to implement the VECP; and
- (ii) reduces the contract price without impairing essential function or characteristics, provided that it is not based solely on a change in deliverable end item quantities.

(b) Documentation. As a minimum, the following information shall be submitted by the Contractor with each VECP:

- (i) a description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages of each; justification where function or characteristics of a work item is being altered; and the effect of the change on the performance of the end item;
- (ii) an analysis and itemization of the requirements of the contract which must be changed if the VECP is accepted and a recommendation as to how to make each such change (e.g., a suggested specification revision);
- (iii) a separate detailed cost estimate for both the existing contract requirement and the proposed change to provide an estimate of the reduction in costs, if any, that will result from acceptance of the VECP, taking into account the costs of development and implementation by the Contractor (including any amount attributable to subcontracts in accordance with paragraph (f) below);
- (iv) a prediction of any effects the proposed change would have on related costs to the Military Department such as Government furnished property costs, and costs of maintenance and operation;

(v) a statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract, noting any effect on the contract completion time or delivery schedule; and

(vi) Identification of any previous submission of the VECP, including the dates submitted, the agencies involved, the numbers of the Government contracts involved, and the previous actions by the Government, if known.

(c) *Submission.* To expedite a determination, VECPs shall be submitted to the Resident Engineer at the worksite with a copy to the Contracting Officer. Proposals shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon any proposal submitted pursuant to this clause. If the evaluation period is likely to exceed 45 calendar days, the PCO shall promptly notify the Contractor of the estimated decision date and provide the reasons for the additional time required. The Contractor has the right to withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP.

(d) *Acceptance.* The Contracting Officer may accept, in whole or in part, by contract modification any VECP submitted pursuant to this clause. The Contracting Officer may accept the VECP even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall remain obligated to perform in accordance with this contract. Contract modifications made pursuant to this clause will so state. The decision of the Contracting Officer as to the acceptance of any VECP under this contract shall be final and shall not be subject to the "Disputes" clause of this contract.

(e) *Sharing.* If a VECP submitted by the Contractor pursuant to this clause is accepted, the contract price shall be adjusted without regard to profit in accordance with the following provisions:

(i) *Definition:*

(A) Instant contract savings to the Contractor (ICS) are the estimated reduction in the Contractor's cost of performance resulting from the acceptance of the VECP. The proposed cost reduction includes estimated allowable Contractor development and implementation costs (CC). The Contractor's development and implementation costs include any subcontractor development and implementation costs (see (f) below). For purposes of this clause, Contractor development costs are those costs incurred after the Contractor has identified a specific VE project and prior to acceptance and implementation by the Government.

(B) Government Costs (GC) are those DoD costs which directly result from development and implementation of the VECP, such as test and evaluation of the VECP.

(ii) *Calculations and Actions.* Multiply ICS by 45% and GC by 55%. Add these two results, e.g., (.45 ICS plus .55 GC) and subtract from the contract price.

(f) *Subcontracts.* The Contractor shall include appropriate VE arrangements in any subcontract of \$50,000 or greater, and may include such arrangements in contracts of lesser value. To compute any adjustment in the contract price under paragraph (e) above, the Contractor's cost of development and implementation of a VECP which is accepted under this contract shall include any development and implementation costs of a subcontractor which clearly pertains to such VECP, but shall exclude any VE incentive payments which the Contractor may make to a subcontractor. The Contractor may make whatever VE incentive payment arrangements he chooses with his subcontractors, provided that any payments to subcontractors under such arrangements are made from the Contractor's, and not the Government's, share of the savings resulting from the VECP.

(g) *Data.* The Contractor may restrict the Government's right to use any sheet of a VECP or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet:

"This data furnished pursuant to the Value Engineering Incentive clause of contract shall not be disclosed outside the Government, or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations."

In the event of acceptance of a VECP, the Contractor hereby grants to the Government unlimited rights, as defined in the clause of ASPR 7-104.9(a), in the VECP and supporting data, except that, with respect to data which qualifies as and is submitted as limited rights technical data in accordance with the clause of ASPR 7-104.9(a), the Government shall have the rights specified in the contract modification referred to in paragraph (d) hereof and the data shall be appropriately marked.

(7-602.50)

68. REQUIRED INSURANCE (1977 JAN)

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(a) The Contractor shall procure and maintain during the period of his performance under this contract the following minimum insurance.

COVERAGE

Type of Insurance	Per Person	Per Accident	Property
1. Comprehensive General Liability	\$100,000	\$300,000	\$10,000
2. Automobile Liability	\$100,000	\$300,000	\$10,000
3. Workmen's	As required		
4. (Other as required by State law)			

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above-required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice thereof to the Contracting Officer.

(c) The Contractor agrees to insert the substance of this clause, including this paragraph (c), in all subcontracts hereunder. (7-603.10)

79. CONTRACTOR QUALITY CONTROL (CQC) (4-77)

This clause applies only when specifically required by the specifications.

(a) The contractor shall provide a quality control organization and system to perform inspections, tests, and retesting in the event of failure of all items of work, including that of his subcontractors, to assure compliance with the contract provisions. Quality control will be established for all work, except where specific provisions of the contract provide for Government approvals, inspections, and tests. The CQC system will specifically include, but not be limited to, the inspections and tests required in the technical provisions of the contract specifications and shall cover all construction operations, including both on-site and off-site fabrication.

(b) The contractor shall provide a CQC representative, supplemented as necessary by additional personnel, who shall be on the work at all times during progress, with complete authority to take any action necessary to ensure compliance with the contract. The CQC representative shall be appointed by a letter addressed to him and signed by an officer of the firm. This letter shall detail the CQC representative's authority and responsibility to act for the contractor. The CQC representative shall report directly to an officer of the firm, and shall not be the same individual as, nor be subordinate to, the job superintendent or project manager. The CQC representative shall have no job-related responsibilities other than quality control.

(c) The contractor shall furnish four copies of the CQC plan to the Contracting Officer within fifteen calendar days after receipt of the Notice of Award. The CQC plan shall detail the procedures, instructions, and reports to be used to assure compliance with the contract. Unless specifically authorized by the Contracting Officer in writing, no construction will be started until the CQC plan is approved. This plan will include, as a minimum:

(1) A copy of the letter appointing the CQC representative, signed by an officer of the firm, outlining the CQC representative's duties, responsibilities, and authority. This letter must include the authority to direct removal and replacement of any defective work.

(2) The quality control organization in chart form, showing the relationship of the quality control organization to other elements of the firm.

(3) Names and qualifications of personnel in the quality control organization.

(4) Area of responsibility and authority of each individual in the quality control organization.

(5) A listing of outside organizations such as testing laboratories, architects, and consulting engineers that will be employed by the contractor, and a description of the services these firms will provide.

(6) Procedures for reviewing all shop drawings, samples, certificates, or other submittals for contract compliance, including the name of the person(s) authorized to sign the submittals for the contractor, as complying with the contract.

(7) An inspection schedule, keyed to the construction schedule and following the order of the specification technical sections, indicating what inspections and tests will be performed, procedures for the inspections and tests, the names of persons responsible for the inspection and testing for each segment of work, and the time schedule for each inspection and test.

(8) The procedures for documenting quality control operation, inspection, and testing, with a copy of all forms and reports to be used for this purpose. The contractor shall also include a submittal status log listing all submittals required by the specifications and stating the action required by the contractor or the Government. The contractor shall complete columns (a) through (e) of this log and name the persons authorized to review the submittals.

(d) Inspection procedures shall include, as a minimum:

(1) **Preparatory Inspection.** Preparatory Inspection shall be performed before beginning any work, and in addition, before beginning each segment of work. Preparatory Inspection shall include a review of the contract requirements, the review and approval of shop drawings and other submittal data, a check to assure that required control testing will be provided, a physical examination to assure that all materials and equipment conform to approved shop drawings and submittal data, and a check to assure that all required preliminary work has been completed.

(2) **Initial Inspection.** An Initial Inspection shall be performed as soon as a representative segment of the particular item of work has been accomplished. Initial inspection shall include performance of scheduled tests, examination of the quality of workmanship, a review of test results for compliance with contract requirements, a review for omissions or dimensional errors, and approval or rejection of the initial segment of the work.

(3) **Follow-up Inspections.** Follow-up Inspections shall be performed daily, and more frequently as necessary, and shall include continued testing and examinations to assure continued compliance with the contract requirements.

(e) At least five days after the CQC Plan is submitted, but before construction operations are started, the contractor shall meet with the Contracting Officer and discuss the quality control requirements. The purpose of the meeting shall be to develop a mutual understanding relative to details of the system, including forms to be used for recording the quality control operations, inspections, tests, approvals, certifications, administration of the system, and Government surveillance. This meeting shall also develop a schedule for future weekly or biweekly CQC meetings and shall establish procedures for submission of daily reports and other records and documents.

(f) The contractor shall submit daily CQC reports to the Contracting Officer identifying prime and subcontractor personnel and equipment on the site, idle equipment and personnel, material deliveries, weather conditions, work accomplished, inspections and tests conducted, results of inspections and tests, nature of defects found, causes for rejection, proposed remedial action, and corrective actions taken, together with the following certification: "On behalf of the contractor, I certify that this report is complete and correct, and all materials and equipment used and work performed during this reporting period are in compliance with the contract plans and specifications, to the best of my knowledge, except as noted above." This certification shall be signed for the contractor by the authorized CQC representative.

(g) Test results provided shall cite the contract requirements, the test or analysis procedures used, and the actual test results, and include a statement that the item tested or analyzed conforms or fails to conform to the specification requirements. Each report shall be conspicuously stamped on the cover sheet in large red letters "CONFORMS" or "DOES NOT CONFORM" to the specification requirements as the case may be. All test reports shall be signed by a testing laboratory representative authorized to sign certified test reports. The contractor shall arrange for immediate and direct delivery of the signed original of all reports, certifications, and other documentation to the Contracting Officer.

(h) All submittals, shop drawings, catalog cuts, samples, etc., unless otherwise specifically noted, shall be approved and certified by the contractor as conforming to the drawings and specifications. Four copies of all shop drawings, catalog cuts, or other submittals, with the contractor's approval indicated thereon, shall be sent to the Contracting Officer within one working day of the contractor's approval.

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GENERAL PROVISIONS (Construction Contract)

(Provisions 1 through 31 are those prescribed by the General Services Administration in Standard Form 23-A (Rev. 4-75), as amended pursuant to the latest revisions of the Armed Services Procurement Regulation.)

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GENERAL PROVISIONS (Construction Contract)

(Provisions 1 through 31 are those prescribed by the General Services Administration in Standard Form 23-A (Rev. 4-75), as amended pursuant to the latest revisions of the Armed Services Procurement Regulation.)

1. DEFINITIONS (1964 JUN)

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative. (ASPR 7-602.1)

2. SPECIFICATIONS AND DRAWINGS (1964 JUN)

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided. (ASPR 7-602.2)

3. CHANGES (1968 FEB)

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

(i) In the specifications (including drawings and designs);

(ii) In the method or manner of performance of the work;

(iii) In the Government-furnished facilities, equipment, materials, services, or site; or

(iv) Directing acceleration in the performance of the work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation, or determination) from the Contracting Officer, which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change

under this clause or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly. *Provided, however,* That except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required. *And provided further,* that in the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Government. The statement of claim hereunder may be included in the notice under (b) above.

(f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract. (ASPR 7-602.3)

4. DIFFERING SITE CONDITIONS (1968 FEB)

(a) The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (a) above, *provided, however,* the time prescribed therefor may be extended by the Government.

(c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract. (ASPR 7-602.4)

5. TERMINATION FOR DEFAULT-DAMAGES FOR DELAY-TIME EXTENSIONS (1969 AUG)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or

any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract, and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such

termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier. (ASPR 7-602.5)

6. DISPUTES (1964 JUN)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged. *Provided, however*, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law. (ASPR 7-602.6)

7. PAYMENTS TO CONTRACTOR (1976 MAR)

(a) The Government will pay the contract price as hereinafter provided.

(b) The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations

other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

(c) In making such progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, he may authorize such payment to be made in full without retention of a percentage. Also, whenever the work is substantially complete, the Contracting Officer shall retain an amount he considers adequate for protection of the Government and, at his discretion, may release to the Contractor all or a portion of any excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

(d) All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Government with a release of all claims against the Government arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee. (ASPR 7-602.7)

8. ASSIGNMENT OF CLAIMS (1976 OCT)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act; and is with the Department of Defense, the General Services Administration, the Energy Research and Development Administration, the National Aeronautics and Space

Administration, the Federal Aviation Administration, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of Section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer. (ASPR 7-602.8)

9. MATERIAL AND WORKMANSHIP (1964 JUN)

(a) Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may at his option, use any equipment, material, article, or process which, in the judgement of the Contracting Officer, is equal to that named. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by this contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepared. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.

(b) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable. (ASPR 7-602.9)

10. INSPECTION AND ACCEPTANCE (1976 OCT)

(a) All work (which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components) shall be subject to inspection and test by the Government at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of the Government and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the work strictly complies with the contract requirements. No inspection or test by the Government shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of

the Government after acceptance of the completed work under the terms of paragraph (f) of this clause, except as hereinabove provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by the Government not to conform to the contract requirements, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with the clause of this contract entitled "Termination for Default-Damages For Delay-Time Extensions."

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and test by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Government reserves the right to charge to the Contractor any additional cost of inspection or test when material or workmanship is not ready at the time specified by the Contractor for inspection or test or when reinspection or retest is necessitated by prior rejection.

(e) Should it be considered necessary or advisable by the Government at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, and equitable adjustment shall be made in the contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.

(f) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract, or that portion of the work that the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Government's rights under any warranty or guarantee. (ASPR 7-602.11)

11. SUPERINTENDENCE BY CONTRACTOR (1976 OCT)

The Contractor, at all times during performance and until the work is completed and accepted, shall give his personal

superintendence to the work or have on the work a competent superintendent, satisfactory to the Contracting Officer and with authority to act for the Contractor. (ASPR 7-602.12)

12. PERMITS AND RESPONSIBILITIES (1964 JUN)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted. (ASPR 7-602.13)

13. CONDITIONS AFFECTING THE WORK (1964 JUN)

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract. (ASPR 7-602.14)

14. OTHER CONTRACTS (1964 JUN)

The Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. (ASPR 7-602.15)

15. SHOP DRAWINGS (1976 OCT)

(a) The term "shop drawings" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resub-

mission. The Contracting Officer will indicate his approval or disapproval of the shop drawings and if not approved as submitted shall indicate his reasons therefor. Any work done prior to such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from any responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in (c) below.

(c) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation(s), he shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or time of performance, a modification need not be issued.

(d) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated herein) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated herein) of all shop drawings will be retained by the Contracting Officer and one set will be returned to the Contractor. (ASPR 7-602.54(a))

16. USE AND POSSESSION PRIOR TO COMPLETION (1976 OCT)

The Government shall have the right to take possession of or use any completed or partially completed part of the work. Prior to such possession or use, the Contracting Officer shall furnish the Contractor an itemized list of work remaining to be performed or corrected on such portions of the project as are to be possessed or used by the Government, provided that failure to list any item of work shall not relieve the Contractor of responsibility for compliance with the terms of the contract. Such possession or use shall not be deemed an acceptance of any work under the contract. While the Government has such possession or use, the Contractor, notwithstanding the provisions of the clause of this contract entitled "Permits and Responsibilities," shall be relieved of the responsibility for the loss or damage to the work resulting from the Government's possession or use. If such prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the contract price or the time of completion will be made and the contract shall be modified in writing accordingly. (ASPR 7-602.39)

17. SUSPENSION OF WORK (1968 FEB)

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time); an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any

suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract. (ASPR 7-602.46)

18. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1974 APR)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the

completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer, and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire any interest.

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are sorted, within forty five (45) days from the date of submission of the list, and any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable

allowance for profit on work done; *provided*, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) with respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) the cost of such work;

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) a sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable; *provided*, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(ii) the reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b)(ix); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of

payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer pursuant to paragraph (b)(vii).

(f) Costs claimed, agreed to, or determined pursuant to (c),(d),(e), and (i) hereof shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph (c),(e), or (i) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) or (i) hereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer had made a determination of the amount due under paragraph (c),(e) or (i) hereof, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, the Contractor may file with the Contracting Officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause must be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Contracting Officer.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such

excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof. (ASPR 7-602.29(a))

19. PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS (1976 JUL)

(a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the DISPUTES clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97, from the date the Contractor furnishes to the Contracting Officer his written appeal under the DISPUTES clause of this contract, to the date of (i) a final judgment by a court of competent jurisdiction, or (ii) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a) above, (i) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal; and (ii) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction. (ASPR 7-104.82)

20. PRICING OF ADJUSTMENTS (1970 JUL)

When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other provision of this contract, such costs shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract. (ASPR 7-103.26)

21. PATENT INDEMNITY (1964 JUN)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction

work performed hereunder. (ASPR 7-602.16)

22. ADDITIONAL BOND SECURITY (1976 OCT)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, or if the contract price is increased to such an extent that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract. (ASPR 7-602.17)

23. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (1975 JUN)

(a) This clause is applicable if the amount of this contract exceeds \$10,000 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract or such lesser time specified in either Appendix M of the Armed Service Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The terms "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$10,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above for records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of. (ASPR 7-104.15)

24. BUY AMERICAN (1966 OCT)

(a) Agreement. In accordance with the Buy American Act

(41 U.S.C. 10a-10d), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic construction material listed in the "Nondomestic Construction Materials" clause, if any, of this contract.

(b) Domestic construction material. "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) Domestic component. A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. (ASPR 7-602.20)

25. EQUAL OPPORTUNITY (1976 JUL)

(The following clause is not applicable if this contract is exempt under ASPR 12-805. Exemptions include contracts and subcontracts not exceeding \$10,000, and work under contracts and subcontracts which is to be performed outside the United States by employees who were not recruited within the United States.)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining

agreement or other contract or understanding a notice to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of Paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

26. COVENANT AGAINST CONTINGENT FEES (1958 JAN)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the

full amount of such commission, percentage, brokerage, or contingent fee. (ASPR 7-103.20)

27. OFFICIALS NOT TO BENEFIT (1964 JUN)

No member of Congress or resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. (ASPR 7-602.19)

28. CONVICT LABOR (1975 OCT)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 408(c)(2)) and Executive Order 11755, December 29, 1973. (ASPR 7-104.17)

29. UTILIZATION OF SMALL BUSINESS CONCERNS (1958 JAN)

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract. (ASPR 7-602.26 (a))

30. UTILIZATION OF MINORITY BUSINESS ENTERPRISES (1971 NOV)

(a) It is the policy of the Government that Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly-owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking Americans, persons American-Orientals, American-Indians, American Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation. (ASPR 7-104.36(a))

31. FEDERAL, STATE, AND LOCAL TAXES (1971 NOV)

(a) Except as may be otherwise provided in this contract,

the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date and—

(1) results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.

(c) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.

(d) No adjustment of less than \$100 shall be made in the contract price pursuant to paragraph (b) above.

(e) As used in paragraph (b) above, the term "contract date" means the date set for bid opening, or if this is a negotiated contract, the contract date. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(f) Unless there does not exist any reasonable basis to sustain an exemption, the Government upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax; provided that, evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the contract price will be furnished only at the discretion of the Government.

(g) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer. (ASPR 7-103.10 (a))

32. CONTRACTOR INSPECTION SYSTEM (1964 NOV)

The Contractor shall (i) maintain an adequate inspection system and perform such inspections as will assure that the work performed under the contract conforms to contract requirements, and (ii) maintain and make available to the Government adequate records of such inspection. (ASPR 7-602.10)

33. GRATUITIES (1952 MAR)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. (ASPR 7-602.25)

34. RENEGOTIATION (1959 OCT)

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211 et seq.) as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended. (ASPR 7-103.13)

35. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (1965 JAN)

The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail each notice or claim of patent or copyright infringement based on the performance of this

contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) This clause shall be included in all subcontracts. (ASPR 7-103.23)

36. AUTHORIZATION AND CONSENT (1964 MAR)

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in the contract) for all use and manufacture, in the performance of this contract or any part thereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any patented invention (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the OICC directing the manner of performance. The Contractor's entire liability to the Government for patent infringement shall be determined solely by the provisions of the indemnity clause, if any, included in the contract and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted. (ASPR 7-103.22)

37. COMPOSITION OF CONTRACTOR (1965 JAN)

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder. (ASPR 7-602.32)

38. SITE INVESTIGATION (1965 JAN)

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river states, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Government assumes no

responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Government. (ASPR 7-602.33)

39. PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENT (1965 JAN)

(a) The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Contracting Officer.

(b) The Contractor will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to him, and will repair or restore any damage to such facilities, resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer may have the necessary work performed and charge the cost thereof to the Contractor. (ASPR 7-602.34)

40. OPERATIONS AND STORAGE AREAS (1965 JAN)

(a) All operations of the Contractor (including storage of materials) upon Government premises shall be confined to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by his operations.

(b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Contractor only with the approval of the Contracting Officer, and shall be built with labor and materials furnished by the Contractor without expense to the Government. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by him at his expense upon the completion of the work. With the written consent of the Contracting Officer, such buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or local law or regulation. When it is necessary to cross curbs or sidewalks, protection against damage shall be provided by the Contractor and any damaged roads, curbs, or sidewalks shall be repaired by or at the expense of the Contractor. (ASPR 7-602.35)

41. MODIFICATION PROPOSALS-PRICE BREAK-DOWN (1968 APR)

The Contractor, in connection with any proposal he makes

for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient details to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification thereof shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer. (ASPR 7-602.36)

42. SUBCONTRACTORS (1972 FEB)

Within seven days after the award of any subcontract either by himself or a subcontractor, the Contractor shall deliver to the Contracting Officer a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted. The Contractor shall at the same time furnish a statement signed by the subcontractor acknowledging the inclusion in his subcontract of the clauses of this contract entitled "Equal Opportunity," "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act- Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts" and "Contract Termination Debarment." Nothing contained in this contract shall create any contractual relation between the subcontractor and the Government. (ASPR 7-602.37)

43. CLEANING UP (1965 JAN)

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the construction the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer. (ASPR 7-602.40)

44. ADDITIONAL DEFINITIONS (1965 JAN)

(a) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Contracting Officer is intended and similarly the words "approved," "acceptable," "satisfactory" or words of like import shall mean "approved by" or "acceptable to" or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(b) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provided complete in place," that is "furnished and installed." (ASPR 7-602.41)

45. ACCIDENT PREVENTION (1967 JUN)

(a) In order to provide safety controls for protection to

the life and health of employees and other persons; for prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of this contract, the Contractor shall comply with all pertinent provisions of Corps of Engineers Manual, EM 385 1-1, dated 1 March 1967 entitled "General Safety Requirements," as amended, and will also take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for the purpose. Copies of this Manual may be obtained from the Government Printing Office, Wash., D.C. 20402 at 55 cents per copy.

(b) The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to work performed under this contract.

(c) The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

(d) Compliance with the provisions of this article by subcontractors will be the responsibility of the Contractor.

If the contract involves more than 6 months work or is described as hazardous character in the Invitation for Bids, Schedule, or Specifications, the following paragraph (e) will apply.

(e) Prior to commencement of the work the Contractor will:

(1) submit in writing his proposals for effectuating this provision for accident prevention;

(2) meet in conference with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the over-all safety program. (ASPR 7-602.42)

46. GOVERNMENT INSPECTORS (1965 JAN)

The work will be conducted under the general direction of the Contracting Officer and is subject to inspection by his appointed inspectors to insure strict compliance with the terms of the contract. No inspector is authorized to change any provision of the specifications without written authorization of the Contracting Officer, nor shall the presence or absence of an inspector relieve the Contractor from any requirements of the contract. (ASPR 7-602.43)

47. RIGHTS IN SHOP DRAWINGS (1966 APR)

(a) Shop drawings for construction means drawings submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication, and

assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier. (ASPR 7-602.47)

48. PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (1975 OCT)

(The following clause is applicable to rateable contracts.)

The Contractor shall follow the provisions of DMS Reg. 1 or DPS Reg. 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this order. (ASPR 7-104.18)

49. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-PRICE ADJUSTMENTS (1970 JAN)

(a) This clause shall become operative only with respect to any modification of this contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause is limited to defects in data relating to such modification.

(b) If any price, including profit, or fee, negotiated in connection with any price adjustment under this contract was increased by any significant sums because:

(i) the Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

(ii) a subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data-Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;

(iii) a subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(iv) the Contractor or a subcontractor or prospective subcontractor furnished any data, not within (i), (ii) or (iii) above, which was not accurate, as submitted; the price shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the

actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, *provided* the actual subcontract price was not affected by defective cost or pricing data.

Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, *provided* that they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors. (ASPR 7-104.29 (b))

50. INTEREST (1972 MAY)

Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due until paid and shall be subject to adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The interest rate per annum shall be the interest rate in effect which has been established by the Secretary of the Treasury pursuant to Public Law 92-41: 85 STAT 97 for the Renegotiation Board, as of the date the amount becomes due as herein provided. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract; (ii) the date of the first written demand for payment, consistent with this contract, including demand consequent upon default termination; (iii) the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount; or (iv) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement. (ASPR 7-104.39)

51. AUDIT BY DEPARTMENT OF DEFENSE (1975 JUN)

(The following clause is applicable unless this contract was entered into by formal advertising and is not in excess of \$100,000)

(a) General. The Contracting Officer or his representatives shall have the audit and inspection rights described in the applicable paragraphs (b), (c) and (d) below.

(b) Examination of Costs. If this is a cost reimbursement type, incentive, time and materials, labor hour, or price redeterminable contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer or his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plants,

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or such parts thereof, as may be engaged in the performance of this contract.

(c) **Cost or Pricing Data.** If the Contractor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the United States Government shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Additionally, in the case of pricing any change or modification exceeding \$100,000 to formally advertised contracts, the Comptroller General of the United States or his representatives who are employees of the United States Government shall have such rights. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) **Reports.** If the Contractor is required to furnish Cost Information Reports (CIR) or Contract Fund Status Reports (CFSR), the Contracting Officer or his representatives shall have the right to examine books, records, documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports, and (ii) the data reported.

(e) **Availability.** The materials described in (b), (c) and (d) above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit, or reproduction, until the expiration of three years from the date of final payment under this contract or such lesser time specified in Appendix M of the Armed Services Procurement Regulation, and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three years from the date of any resulting final settlement.

(2) Records which relate to appeals under the "Disputes" clause of this contract, or litigation or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been disposed of.

(f) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (f), in all subcontracts exceeding \$10,000 hereunder, except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the Government prime contract. (ASPR 7-104.41)

52. SUBCONTRACTOR COST OR PRICING DATA-PRICE ADJUSTMENTS (1970 JAN)

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate

increases and/or decreases in costs plus applicable profits expected to exceed \$100,000. The requirements of this clause shall be limited to such modifications.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed \$100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract which exceeds \$100,000. (ASPR 7-104.42 (b))

53. GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (1964 NOV)

(a) The Government shall deliver to the Contractor, for use only in connection with this contract, the property described in the schedule or specifications (hereinafter referred to as "Government-furnished property"), at the times and locations stated therein. If the Government-furnished property, suitable for its intended use, is not so delivered to the Contractor, the Contracting Officer shall, upon timely written request made by the Contractor, and if the facts warrant such action, equitably adjust any affected provision of this contract pursuant to the procedures of the "Changes" clause hereof.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall maintain adequate property control records of Government-furnished property in accordance with sound industrial practice.

(c) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

(d) The Contractor shall, upon completion of this contract, prepare for shipment, deliver f.o.b. origin, or dispose of all Government-furnished property not consumed in the performance of this contract or not therefore delivered to the Government, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or paid in such other manner as the Contracting Officer may direct. (ASPR 7-104.24(f))

54. VARIATIONS IN ESTIMATED QUANTITIES (1968 APR)

Where the quantity of a pay item in this contract is an

estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of such delay, or within such further period of time which may be granted by the Contracting Officer prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in his judgment the findings justify. (ASPR 7-603.27)

55. SALVAGE MATERIALS AND EQUIPMENT (1965 JAN)

The Contractor shall maintain adequate property control records for all materials or equipment specified to be salvaged. These records may be in accordance with the Contractor's system of property control, if approved by the property administrator. The Contractor shall be responsible for the adequate storage and protection of all salvaged materials and equipment and shall replace, at no cost to the Government, all salvage materials and equipment which are broken or damaged during salvage operations as the result of his negligence, or while in his care. (ASPR 7-603.29)

56. AVAILABILITY AND USE OF UTILITY SERVICES (1967 APR)

This clause shall be applicable only if so expressly stated in the Schedule, or specification, or Invitation for Bids.

(a) The Government will make available to the Contractor, from existing outlets and supplies, all reasonably required amounts of utilities as specified in the Schedule or specifications. Except as otherwise provided in the Schedule or specifications, each utility shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates as determined by the Contracting Officer.

(b) The Contractor shall carefully conserve utilities furnished without charge. The Contractor, at his own expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines and, if necessary to determine charges, all meters required to measure the amount of each utility used; and he shall remove the same prior to final acceptance of the construction. (ASPR 7-603.30)

57. MISPLACED MATERIAL (1965 JAN)

Should the Contractor, during the progress of the work lose, dump, throw overboard, sink, or misplace any material, plant, machinery, or appliance, which in the opinion of the Contracting Officer may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with the utmost dispatch. The Contractor shall give immediate notice, with description and

location of such obstructions, to the Contracting Officer or inspector, and when required shall mark or buoy such obstructions until the same are removed. Should he refuse, neglect, or delay compliance with the above requirements, such obstructions may be removed by the Contracting Officer, and the cost of such removal may be deducted from any money due or to become due the Contractor, or may be recovered under his bond. The liability of the Contractor for the removal of a vessel wrecked or sunk without fault or negligence shall be limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899. (33 U.S.C. 410 et seq.) (ASPR 7-603.32)

58. SIGNAL LIGHTS (1965 JAN)

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as approved by the Secretary of the Army (33 C.F.R. 201.1-201.16) and the Commandant, U.S. Coast Guard (33 C.F.R. 80.18-31a and 33 C.F.R. 95.51-95.70). (ASPR 7-603.33)

59. IDENTIFICATION OF EMPLOYEES (1965 JAN)

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project. (ASPR 7-603.34)

60. TIME EXTENSIONS (1965 JAN)

Notwithstanding any other provisions of this contract it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages pursuant to the new completion schedule. (ASPR 7-603.36)

61. RESERVED

62. PROGRESS CHARTS AND REQUIREMENTS FOR OVERTIME WORK (1965 JAN)

(a) The Contractor shall within 5 days or within such time as determined by the Contracting Officer, after date of commencement of work, prepare and submit to the Contracting Officer for

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approval a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule may be in any form, at the option of the Contractor, but shall maintain current with each submittal, at least the following information:

- (1) The various classes and areas of work, broken down into:
 - a. Times projected for submittals, approvals, and procurement.
 - b. Times for installation and erection.
 - c. Times for testing and inspection.
- (2) The work completed and the work remaining to be done to complete the project.
- (3) Any items of work which will delay the start or completion of other major items of work so as to delay completion of the whole project.

The Contractor shall submit an updated copy of his schedule with each invoice, and when required by major changes in the work. If the Contractor fails to submit a progress schedule within the time herein prescribed, the Contracting Officer may withhold approval of progress payments until such time as the Contractor submits the required progress schedule.

(b) If, in the opinion of the Contracting Officer, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve his progress and the Contracting Officer may require him to increase the number of shifts, or overtime operations, days of work, or the amount of construction planned or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Government.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this provision shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such determination the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with the clause of the Contract entitled "Termination for Default-Damages for Delay-Time Extensions." (ASPR 7-603.48)

63. PERFORMANCE OF WORK BY CONTRACTOR (1965 JAN)

The Contractor shall perform on the site, and with his own organization, work equivalent to at least 20 percent of the total amount of the work to be performed under the contract. If during the progress of the work the Contractor requests a reduction in such percentage and the Officer in Charge of Construction determines that it would be to the Government's advantage, the percentage of the work hereunder required to be performed by the Contractor may be reduced, provided written approval of such reduction is

obtained from the Officer in Charge of Construction. (ASPR 7-603.15)

64. LAYOUT OF WORK (1965 JAN)

The Contractor shall layout his work from Government-established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, and materials and labor as may be required in laying out any part of the work from the base lines and bench marks established by the Government. The Contractor will be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Officer in Charge of Construction. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other marks established by the Officer in Charge of Construction until authorized to remove them. If such marks are destroyed, by the Contractor or through his negligence, prior to their authorized removal, they may be replaced by the Officer in Charge of Construction at his discretion. The expense of replacement will be deducted from any amounts due or to become due the Contractor. (ASPR 7-604.3)

65. WARRANTY OF CONSTRUCTION (1974 APR)

(a) In addition to any other warranties set out elsewhere in this contract, the Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his subcontractors or suppliers at any tier. Such warranty shall continue for a period of one year from the date of final acceptance of the work, but with respect to any part of the work which the Government takes possession of prior to final acceptance, such warranty shall continue for a period of one year from the date the Government takes possession. Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to Government owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.

(b) The Government shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

(c) Should the Contractor fail to remedy any failure, defect, or damage described in (a) above within a reasonable time after receipt of notice thereof, the Government shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

(d) In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work and materials shall, at the direction of the Government, be enforced by the Contractor for the benefit of the Government. In such case if the

Contractor's warranty under (a) above has expired, any suit directed by the Government to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the Government. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.

(e) If directed by the Contracting Officer, the Contractor shall require any such warranties to be executed in writing to the Government.

(f) Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage which results from any such defect in Government furnished material or design.

(g) The warranty specified herein shall not limit the Government's rights under the "Inspection and Acceptance" clause of this contract with respect to latent defects, gross mistake, or fraud.

(h) Defects in design or manufacture of equipment specified by the Government on a "brand name and model" basis, shall not be included in this warranty. The Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties in writing directly to the Government. (ASPR 7-604.4)

66. VALUE ENGINEERING INCENTIVE (1974 APR)

(a) Application. This clause applies to a Contractor developed and documented Value Engineering Change Proposal (VECP) which:

(i) Requires a change to this contract to implement the VECP; and

(ii) reduces the contract price without impairing essential function or characteristics, *provided* that it is not based solely on a change in deliverable end item quantities.

(b) Documentation. As a minimum, the following information shall be submitted by the Contractor with each VECP:

(i) a description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages of each; justification where function or characteristics of a work item is being altered; and the effect of the change on the performance of the end item;

(ii) an analysis and itemization of the requirements of the contract which must be changed if the VECP is accepted and a recommendation as to how to make each such change (e.g., a suggested specification revision);

(iii) a separate detailed cost estimate for both the existing contract requirement and the proposed change to provide an estimate of the reduction in costs, if any, that will result from acceptance of the VECP, taking into account the costs of development and implementation by the Contractor (including any amount attributable to subcontracts in accordance with paragraph (f) below);

(iv) a prediction of any effects the proposed change would have on related costs to the Military Department such as Government furnished property costs, and costs of maintenance and operation;

(v) a statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract, noting any effect on the contract completion time or delivery schedule; and

(vi) identification of any previous submission of the VECP, including the dates submitted, the agencies involved, the numbers of the Government contracts involved, and the previous actions by the Government, if known.

(c) Submission. To expedite a determination, VECPs shall be submitted to the Resident Engineer at the worksite with a copy to the Contracting Officer. Proposals shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon any proposal submitted pursuant to this clause. The Contractor has the right to withdraw, in whole or in part, any VECP at any time prior to acceptance by the Government.

(d) Acceptance. The Contracting Officer may accept, in whole or in part, by contract modification any VECP submitted pursuant to this clause. The Contracting Officer may accept the VECP even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall remain obligated to perform in accordance with this contract. Contract modifications made pursuant to this clause will so state. The decision of the Contracting Officer as to the acceptance of any VECP under this contract shall be final and shall not be subject to the "Disputes" clause of this contract.

(e) Sharing. If a VECP submitted by the Contractor pursuant to this clause is accepted, the contract price shall be adjusted without regard to profit in accordance with the following provisions:

(i) Definition:

(A) Instant Contract Savings to the Contractor (ICS) are the estimated reduction in the Contractor's cost of performance resulting from the acceptance of the VECP. The proposed cost reduction includes estimated allowable Contractor development and implementation costs (CC). The Contractor's development and implementation costs include any subcontractor development and implementation costs (see (f) below). For purposes of this clause, Contractor development costs are those costs incurred after the Contractor has identified a specific VE project and prior to acceptance and implementation by the Government.

(B) Government Costs (GC) are those DOD costs which directly result from development and implementation of the VECP, such as test and evaluation of the VECP.

(ii) Calculations and Actions. Multiply ICS by 45% and GC by 55%. Add these two results, e.g., (.45 ICS plus .55 GC) and subtract from the contract price.

(f) Subcontracts. The Contractor shall include appropri-

ate VE arrangements in any subcontract of \$50,000 or greater, and may include such arrangements in contracts of lesser value. To compute any adjustment in the contract price under paragraph (e) above, the Contractor's cost of development and implementation of a VECP which is accepted under this contract shall include any development and implementation costs of a subcontractor, and any VE incentive payments to a subcontractor, which clearly pertain to such VECP. However, no such payment or accrual to a subcontractor will be permitted, either as a part of the Contractor's development or implementation costs or otherwise to reduce the Government's share.

(g) Data. The Contractor may restrict the Government's right to use any sheet of a VECP or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet:

"This data furnished pursuant to the 'Value Engineering Incentive' clause of contract shall not be disclosed outside the Government, or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations. If such a VECP is accepted by the Government under said contract after the use of this data in such an evaluation, the Government shall have the right to duplicate, use, and disclose any data reasonably necessary to the full utilization of such VECP as accepted, in any manner and for any purpose whatsoever, and have others so do."

In the event of acceptance of a VECP, the Contractor hereby grants to the Government all rights to use, duplicate or disclose, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data reasonably necessary to fully utilize such VECP (ASPR 7-602.50).

67. VALUE ENGINEERING COST COMPUTATION (1-75)

In computing the instant contract savings to the Contractor (ICS), under Clause 66, "Value Engineering Incentive (1974 Apr)", there shall not be taken into consideration any Value Engineering incentive payments which the Contractor may make to the subcontractor, i.e., such amounts will not be deemed a development and implementation cost at any tier.

68. REQUIRED INSURANCE (1968 APR)

(a) The Contractor shall procure and maintain during the entire period of this performance under this contract the following minimum insurance.

Type of Insurance	COVERAGE		
	Per Person	Per Accident	Property
1. Comprehensive General Liability	\$100,000	\$300,000	\$10,000
2. Automobile Liability	\$100,000	\$300,000	\$10,000
3. Workmen's	As required		

4. (Other as required by State Law)

(b) Prior to commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective until 30 days after written notice thereof to the Contracting Officer.

(c) The Contractor agrees to insert the substance of this clause, including this paragraph (c), in all subcontracts hereunder. (ASPR 7-603.10)

69. GOVERNMENT REPRESENTATIVES (6-72)

(a) The work will be under the general direction of the Contracting Officer, the Commander, Naval Facilities Engineering Command, who shall designate an officer of the Civil Engineer Corps, United States Navy, or other officer or representative of the Government, as Officer in Charge of Construction, hereinafter referred to as the "OICC," who except in connection with the "Disputes" clause shall be the authorized representative of the Contracting Officer and under the direction of the Contracting Officer have complete charge of the work, and shall exercise full supervision and general direction of the work, so far as it affects the interest of the Government. For the purposes of the "Dispute" clause the Contracting Officer shall mean the Commander, Naval Facilities Engineering Command, the Acting Commander, their successors, or their representatives specially designated for this purpose.

(b) The provisions in this clause or elsewhere in this contract regarding supervision, approval or direction by the Contracting Officer or the OICC or action taken pursuant thereto are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the work either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.

70. SPECIFICATIONS AND DRAWINGS (6-72)

To Clause 2 add the following paragraphs:

(b) Omissions and Misdescriptions. Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) Deviations. Deviations from the drawings and dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the OICC.

71. PRECEDENCE (6-72)

In the event of conflict or inconsistency between any of the provisions of the various portions of this contract (the reconciliation of which is not otherwise provided for here), precedence shall be given in the following order, the provisions of any particular portion prevailing over those of a subsequently listed portion.

(1) Typewritten portions of the contract.

(2) the specifications referred to in Standard Form 23 (including all addenda, and mechanical and technical but not contractual aspects of incorporated provisions) as specifically amended herein, if amended.

(3) printed provisions of the contract form, including printed provisions of added slip sheets.

72. ORAL MODIFICATION (6-72)

No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this contract.

73. NO WAIVER BY GOVERNMENT (6-72)

The failure of the Government in any one or more instances to insist upon the strict performance of any of the terms of this contract or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

74. SUPERSEDURE (6-72)

If this contract has been preceded by a Letter or Dispatch of Intent or a Notice of Award, anticipating the execution of this contract then such Letter or Dispatch or Notice and all rights and obligations of the parties thereunder are superseded and merged into this contract. All acts of the Contractor and the Government and all payments, if any, made by the Government under said Letter or Dispatch or Notice shall be deemed to have been under this contract.

75. SANITATION (6-72)

Adequate sanitary conveniences of any approved type for the use of persons employed on the work, and properly secluded from public observation, shall be constructed and maintained by the Contractor in such a manner and at such points as shall be required or approved by the OICC. These conveniences shall be maintained at all times without nuisance and their use shall be strictly enforced. Upon completion of the work they shall be removed from the premises, leaving the premises clean and free from nuisance.

76. TESTING FOUNDATIONS (6-72)

Tests of the bearing value of the material underlying the foundation of the structure to be built shall be made at such times and places and in such a manner as may be directed by the OICC. As far as practicable, test piles, when used, shall be so located that they can become part of the finished structure. The Contractor shall furnish OICC ample opportunity for viewing tests and making such records as the latter may consider advisable. The Contractor shall be entitled to compensation for making such tests in the same manner as for a change required by the OICC under Clause 3 to the extent the contract price does not include compensation therefor. Notice must be given of intention to request compensation in accordance with Clause 3.

77. PAYMENT TO CONTRACTOR (6-72)

(a) If the contract amount exceeds one million dollars Clause 7 PAYMENTS TO CONTRACTOR is modified as follows:

"Where the time originally specified for completion of this contract exceeds one year, the Contracting Officer, at any time

after 50 percent of the work has been completed, if he finds that satisfactory progress is being made, may reduce the total amount retained from progress payments to an amount not less than 10 percent of the estimated value of the work remaining to be done under the contract or 1½ percent of the total contract amount whichever is higher. In computing the total contract amount, for the purposes of the preceding sentence, the contract amount for any separate building, public work, or other division of the contract on which the price is stated separately in the contract and on which payment has been in full, including retained percentage thereon under this clause shall be excluded."

(b) To Clause 7 add the following sentence at the end of paragraph (b), and add paragraph (f) below:

Such payments shall be made on submission of itemized requests by the Contractor and shall be subject to reduction for overpayments or increase for underpayments on preceding payments to the Contractor.

(f) The obligation of the Government to make any of the payments required under any of the provisions of this contract shall, in the discretion of the OICC, be subject to (1) reasonable deductions on account of defects in material or workmanship, and (2) any claims which the Government may have against the Contractor under or in connection with this contract. Any overpayments to the Contractor shall, unless otherwise adjusted, be repaid to the Government upon demand.

78. CHANGES BOARD AND ESTIMATES (6-72)

In determining any equitable adjustment under Clause 3, the OICC shall, in those instances where the adjustment to be made in compensation is estimated by the OICC to amount to \$20,000 or more, convene, and give full consideration to the report of an advisory board of three members, consisting of two Government representatives appointed by the OICC and one representative appointed by the Contractor. This board shall estimate and report to the OICC the amount of the change in cost, time, or both, resulting from the ordered change. In making all equitable adjustments under Clause 3, compensation for additions will be based upon estimated costs at the time the work is performed and credit for deductions will be based upon estimated costs at the time the contract was made. To such cost estimates, 6 percent shall be added to adjust the Contractor's profits. In arriving at the amount of the change in price, if any, allowance may be made for overhead and general expenses, plant rental, and other similar items.

79. CONTRACTOR QUALITY CONTROL (CQC) (6-72)

This clause applies only when specifically required by the specifications.

(a) The Contractor shall provide a quality control organization and system to perform inspections and tests of all items of work, including that of his subcontractors, to ensure conformance with the contract provisions. Quality control will be established for all work, except where specific provisions of the contract provide for Government approvals, inspections and tests. The Contractor's quality control system will specifically include, but not be limited to the inspections and tests required in the technical provisions of the contract specifications, and shall cover all construction operations, including both on-site and off-site fabrication.

(b) The Contractor shall provide a CQC representative.

supplemented as necessary by additional personnel, who shall be on the work at all times during progress, with complete authority to take any action necessary to ensure conformance with the contract. The CQC representative shall be appointed by a letter addressed to him and signed by an officer of the firm. This letter shall detail the CQC representative's authority and responsibility to act for the Contractor. The CQC representative shall report directly to an officer of the firm and shall not be subordinate to the job superintendent or project manager.

(c) The Contractor shall furnish to the Government within fifteen (15) calendar days after receipt of the Notice of Award, a CQC Plan which shall detail the procedures, instructions, and reports to be used to assure conformance with the contract. Unless specifically authorized by the OICC/ROICC in writing, no construction will be started until the Contractor's quality control plan is approved. This plan will include, as a minimum:

(1) A copy of the appointing letter to the Contractor quality control representative, outlining his duties, responsibilities, and authority, and signed by an officer of the firm. Included in this letter as a minimum, must be the authority to direct removal and replacement of any defective work.

(2) The quality control organization in chart form, showing the relationship of the quality control organization to other elements of the company.

(3) Names and qualifications of personnel in the quality control organization.

(4) Area of responsibility and authority of each individual in the quality control organization.

(5) A listing of outside organizations such as testing laboratories, architects, and consulting engineers that will be employed by the Contractor, and a description of the service these firms will provide.

(6) Procedures for reviewing all shop drawings, samples, certificates, or other submittals for contract compliance, including the name of the person(s) authorized to sign the submittals for the Contractor, as complying with the contract.

(7) An inspection schedule, keyed to the construction schedule, indicating what test will be performed, when testing will be performed, and by whom.

(8) Method of documenting the quality control operation, inspection, and testing, including a copy of all forms and reports to be used for this purpose.

(d) As a minimum, inspection procedures shall include:

(1) Preparatory Inspection. (Performed prior to beginning any work, or segment of work.) Preparatory inspection shall include a review of contract requirements; review and approval of shop drawings and submittal data for the work, or segment of work, (see paragraph (h) below); a check to assure that provisions have been made to provide required control testing; an examination of the work to ascertain that all preliminary work has been completed; and a physical examination of materials and equipment to assure that they conform to approved shop drawings or submittal data.

(2) Initial Inspection. (Performed as soon as a representative segment of the particular item of work has been

accomplished.) Initial inspection shall include performance of scheduled tests, examination of the quality of workmanship, a review of test results for compliance with contract requirements, a review for omissions or dimensional errors, and approval or rejection of the initial segment of the work.

(3) Follow-up Inspections. (Performed daily or as frequently as necessary.) Continued testing and examinations to assure continuing compliance with contract requirements.

(e) After the contract is awarded, but before construction operations are started, the Contractor shall meet with the OICC/ROICC, or his representative, and discuss the quality control requirements. The purpose of the meeting shall be to develop a mutual understanding relative to details of the system, including forms to be used for recording the quality control operations, inspections, tests, approvals, certifications, administration of the system, and Government surveillance. This meeting shall also develop a schedule for future weekly or biweekly CQC meetings and shall establish procedures for submission of daily reports and other records documents.

(f) The Contractor shall submit daily CQC reports to the OICC/ROICC, identifying prime and subcontractor personnel and equipment on the site, idle equipment and personnel, material deliveries, weather conditions; the work accomplished; the inspections and tests conducted; results of inspections and tests; nature of defects found; causes for rejection; proposed remedial action; and corrective actions taken; together with the following certifications: "The above report is complete and correct and all material and equipment used and work performed during this reporting period are in compliance with the contract plans and specifications, to the best of my knowledge, except as noted above." This certification shall be signed for the Contractor by the duly authorized CQC representatives.

(g) Where test results by a testing laboratory are provided, they shall site the contract requirements, the actual test results, and include a statement that the item tested conforms (or fails to conform) to the specification requirements.

(h) All submittals, shop drawings, catalog cuts, samples, etc., unless otherwise specifically noted, shall be approved and certified by the Contractor as conforming to the plans and specifications. Four (4) copies of all shop drawings, catalog cuts, or other submittals, with the Contractor's approval indicated thereon, shall be sent to the ROICC for record purposes, within one (1) working day of the Contractor's approval.

80. DAMAGES FOR DELAY-DEFENSE MATERIALS SYSTEM AND PRIORITIES (6-72)

The Government will take no action pursuant to Clause 5 of Standard Form 23A to terminate the right of the Contractor to proceed or to assess liquidated or actual damages where failure of the Contractor to complete the work within the time specified is due solely to the operation of the Defense Materials System and Priorities, provided the Contractor and his subcontractors comply with the provisions of this System and the Contractor's lateness in completion of the work is not otherwise caused by the fault or negligence of the Contractor. Such delays will be excusable within the meaning of Clause 5, and the Contractor will be entitled to a time extension by reason thereof.

81. SPECIFICATIONS AND STANDARDS (6-72)

The specifications and standards referenced in this

(c) Provide index of included items with each volume. Title the index with applicable specification section name and number.

(d) Clearly mark each item in volume with specification paragraph number to which it pertains.

(e) Assemble each volume in same numerical sequence as specifications section paragraphs.

(f) See individual technical sections for additional information.

The Contractor shall certify on all submittals that the material being proposed conforms to contract requirements. In the event of any variance, the Contractor shall state specifically which portions vary, and request approval of a substitute. The Contractor shall also certify that all Contractor-furnished equipment can be installed in the allocated spaces. Incomplete submittals and submittals with inadequate data will be rejected.

90. CATALOG DATA (6-72)

Catalog data shall be printed pages or permanent copies of the manufacturer's catalogs.

91. SAMPLES (6-72)

Samples in the number specified, shall be shipped prepaid, and delivered as directed by the Officer in Charge of Construction. Samples shall be marked to show name of material, name of supplier, contract number, segment of work where material represented by sample is to be used, and name of Contractor submitting sample.

92. STORM PROTECTION (6-72)

Should warnings of winds of gale force or stronger be issued, the Contractor shall take every practicable precaution to minimize danger to person, to the work and to adjacent property.

93. CONTRACTOR'S DAILY REPORT (6-72)

The Contractor will be required to submit a "Daily Report to Inspector," Form NAVFAC 4330/34. The forms shall be completed daily and delivered to the Officer in Charge of Construction. Data to be included in the form is data on workers by classification, the move-on and move-off of construction equipment furnished by the prime and subcontractor or furnished by the Government, and materials and equipment delivered to the site for installation in the work.

If Clause 79, "Contractor Quality Control" is applicable to this contract, the information required by this clause shall be submitted as a part of the reports required under Clause 79.

94. WORK OUTSIDE REGULAR HOURS (6-72)

If the Contractor desires to carry on work outside regular hours or on Saturdays, Sundays or holidays, he shall submit application to the Officer in Charge of Construction, but shall allow ample time to enable satisfactory arrangements to be made by the Government for inspecting the work in progress. At night, he shall light the different parts of the work in an approved manner. All utility cutovers shall be made after normal working hours or on weekends. Anticipated costs shall be included in the bid.

95. EXISTING WORK (6-72)

The disassembling, disconnecting, cutting, removal or altering in any way of existing work shall be carried on in such a manner as to prevent injury or damage to all portions of existing work, whether they are to remain in place, be re-used in the new work, or be salvaged and stored. All portions of existing work which have been cut, damaged or altered in any way during construction operations shall be repaired or replaced in kind and in an approved manner to match existing or adjoining work. All work of this nature shall be performed by the Contractor at his expense and shall be as directed. Existing work shall, at the completion of all operations, be left in a condition as good as existed before the new work started.

96. SMALL BUSINESS SUBCONTRACTING PROGRAM (MAINTENANCE, REPAIR AND CONSTRUCTION) (1976 OCT)

(The following clause is applicable if this contract is in excess of \$500,000)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors, including suppliers, under this contract. In this connection, the Contractor shall designate an individual to (i) maintain liaison with the Government on small business matters, and (ii) administer the Contractor's "Small Business Subcontracting Program."

(b) The Contractor shall submit DD Form 1140-1 each quarter in accordance with the instructions provided on the form, except that where the Contractor submits the report on a corporate basis rather than a plant basis, he may submit his reports to the Department having the responsibility for the Small Business Subcontracting Program at the corporate headquarters. The reporting requirements of this subparagraph (b) do not apply to small business contractors, small business subcontractors or educational and non-profit institutions.

(c) The Contractor further agrees (i) to insert the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial subcontracting opportunities, and (ii) to insert in each such subcontract exceeding \$500,000 a clause conforming substantially to the language of this clause except that subcontractors shall submit DD Form 1140-1 direct to the Government addressees prescribed on the Form. The Contractor will notify the Contracting Officer of the name and address of each subcontractor that will be required to submit a report on DD Form 1140-1. (ASPR 7-602.26(b))

97. MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM (1971 NOV)

The provisions of this clause shall be applicable only if the amount of this contract exceeds \$500,000.

(a) The Contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the clause, entitled, "Utilization of Minority Business Enterprises") to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall:

(1) Designate a liaison officer who will administer the Contractor's "Minority Business Enterprises Program."

(2) Provide adequate and timely consideration of

specification (including addenda, amendments, and errata listed) shall govern in all cases where references thereto are made. In case of differences between these specifications or standards and this specification or its accompanying drawings, this specification and its accompanying drawings shall govern to the extent of such differences; otherwise, the referenced specifications and standards, shall apply. The requirement for packaging, packing, marking, and preparation for shipment or delivery included in the referenced specifications shall apply only to materials and equipment that are furnished directly to the Government and not to materials and equipment that are to be furnished and installed by the Contractor.

(a) When a number in parenthesis is suffixed to a NAVFAC, NAVDOCKS, Military or Federal Specification, it denotes the effective amendment or change to the document.

(b) Unless otherwise specified by this contract specification, all tests required by the referenced specifications and standards shall be conducted at no expense to the Government under the supervision of and in a laboratory acceptable to the Government.

(c) Application for specifications other than NAVFAC, Yards and Docks, Military or Federal specifications should be made to the organizations publishing them. NAVFAC, Yards and Docks, Federal, and Military specifications may be ordered from Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120. However, a copy of all referenced documents will be available for examination only at the office of the Officer in Charge of Construction.

82. SECURITY REQUIREMENTS (6-72)

No employee or representative of the Contractor will be admitted to the site of the work unless he furnishes satisfactory proof that he is a citizen of the United States or, is specifically authorized admittance to the site of the work by the OICC.

83. STATION REGULATIONS (6-72)

The Contractor and his employees and subcontractors shall become familiar with and obey all Station regulations including fire, traffic, and security regulations. All personnel employed on the station shall keep within the limits of the work (and avenues of ingress and egress), and shall not enter any restricted areas unless required to do so and are cleared for such entry. The Contractor's equipment shall be conspicuously marked for identification.

84. ORDER OF WORK (6-72)

The Contractor shall schedule his work so as to cause the least amount of interference with Station operations. Work schedules shall be subject to the approval of the Officer in Charge of Construction. Permission to interrupt any Station utility service shall be requested in writing a minimum of 5 working days prior to the desired date of interruption.

85. SCHEDULE OF PRICES (6-72)

Within 5 days of receipt of a Notice of Award, the Contractor shall prepare and submit to the Officer in Charge of Construction, a Schedule of Prices (Construction Contract), NAVFAC 4330/4. The schedule shall consist of a detailed breakdown of the contract price, giving the quantities for each of the various kinds of work, the unit prices, and the total prices therefor. The detailed breakdown shall be segregated under each of

the construction categories given hereinafter. The required schedule must be based on the actual breakdown of the bid price. Accordingly, subcontractors who may be involved in work under more than one of these categories shall be advised of this requirement in order to assure their being in a position to furnish these data without delay. The format, content and number of copies required shall be as further prescribed by the Officer in Charge of Construction and shall be subject to his approval. The submission of the required data shall not otherwise affect the contract terms. Form NAVFAC 4330/4 will be furnished by the Officer in Charge of Construction.

86. CONTRACTOR'S INVOICE AND CONTRACT PERFORMANCE STATEMENT (6-72)

Requests for payment in accordance with the terms of the contract shall consist of:

(a) Contractor's Invoice on form NAVFAC 10-7300/30, which shall show, in summary form, the basis for arriving at the amount of the invoice, and

(b) Contract Performance Statement on form NAVFAC 10-7300/31, which shall show in detail, the estimated cost percentage of completion and value of completed performance for each of the construction categories given hereinafter. The format, content, and number of copies required shall be as further prescribed by the Officer in Charge of Construction and shall be subject to his approval. The submission of the required data shall not otherwise affect the contract terms. Forms NAVFAC 10-7300/30 and 10-7300/31 will be furnished by the Officer in Charge of Construction.

87. AS-BUILT RECORD OF MATERIALS USED IN BUILDINGS (6-72)

Prior to completion of the contract, the Contractor shall furnish an "as-built" record of materials used in the construction. Submittal of this data is made a condition for final payment under the contract. Where several manufacturer's brands, types, or classes of the items listed have been used in the project, the specific areas where each item was used shall be designated. Designations shall be keyed to the area and space designations on the contract drawings.

88. OPTIONAL REQUIREMENTS (6-72)

Where a choice of materials and/or methods is permitted herein, the Contractor will be given the right to exercise the option unless stated specifically otherwise.

89. PROPOSED MATERIAL SUBMITTALS REQUIRED OF THE CONTRACTOR (6-72)

Proposed material submittals required of the Contractor shall be made allowing sufficient time for processing, reviews, approval, and procurement before the Contractor is ready to use the material. No material shall be used prior to written approval. Submittals shall be prepared and assembled as follows:

(a) Submit 7 copies of each submittal.

(b) Present all submittals for each specification section as a complete bound volume, titled with project title and contract number.

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the potentialities of known minority business enterprises in all "make-or-buy" decisions.

(3) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises.

(4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises.

(5) Include the "Utilization of Minority Business Enterprises" clause in subcontracts which offer substantial minority business enterprises subcontracting opportunities.

(6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Contracting Officer may from time to time conduct.

(7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors. (ASPR 7-104.36 (b))

98. PREFERENCE FOR DOMESTIC SPECIALTY METALS (1972 NOV)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) furnished by it or purchased by it for direct incorporation in any article delivered to the Government under this contract shall have been melted in the United States, its possessions, or Puerto Rico, provided that this clause shall have effect to the extent that the Secretary or his designee determines, as to any such articles, that a satisfactory quality and sufficient quantity cannot be procured as and when needed at United States market prices.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys. (ASPR 7-104.93 (b))

99. ENVIRONMENTAL LITIGATION (12-74)

(a) If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation as defined below, the Contracting Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor or a Subcontractor at any tier not required by the terms of this contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor or a Subcontractor at any tier other than as required by the terms of this contract, such suspension, delay, or interruption shall be considered as if ordered by the Contracting Officer in the administration of this contract under the terms of the "Suspension of Work" clause of this contract. The period of such suspension, delay or interruption shall be considered unreasonable, and an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) as provided in that clause, subject to all the provisions thereof.

(b) The term "environmental litigation," as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the Government has not duly considered, either substantively or procedurally, the effect of the work on the environment.

100. COST ACCOUNTING STANDARDS (1975 FEB)

(a) Unless the Cost Accounting Standards Board has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (Public Law 91-379, August 15, 1970), the Contractor, in connection with this contract shall:

(1) By submission of a Disclosure Statement, disclose in writing his cost accounting practices as required by regulations of the Cost Accounting Standards Board. The required disclosures must be made prior to contract award unless the Contracting Officer provides a written notice to the Contractor authorizing post-award submission in accordance with regulations of the Cost Accounting Standards Board. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain this Cost Accounting Standards clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and will not be released outside the Government.

(2) Follow consistently the cost accounting practices disclosed pursuant to (1) above in accumulating and reporting contract performance cost data concerning this contract. If any change in disclosed practices is made for purposes of any contract or subcontract subject to Cost Accounting Standards Board requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) below, as appropriate.

(3) Comply with all Cost Accounting Standards in effect on the date of award of this contract or if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any Cost Accounting Standard which hereafter becomes applicable to a

contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (A) Agree to an equitable adjustment as provided in the changes clause of this contract if the contract cost is affected by a change which, pursuant to (3) above, the Contractor is required to make his established cost accounting practices whether such practices are covered by a Disclosure Statement or not.

(B) Negotiate with the Contracting Officer to determine the terms and conditions under which a change to either a disclosed cost accounting practice or an established cost accounting practice, other than a change under (4)(A), above, may be made. A change to a practice may be proposed by either the Government or the Contractor, *provided, however*, that no agreement may be made under this provision that will increase costs paid by the United States.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if he or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any practice disclosed pursuant to subparagraphs (a)(1) and (a)(2) above and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT. 97, or seven percent (7%) per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable Cost Accounting Standard, rule, or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which he enters into the substance of this clause except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that this requirement shall apply only to negotiated subcontracts in excess of \$100,000 where the price negotiated is not based on:

(i) established catalog or market prices of commercial items sold in substantial quantities to the general public, or

(ii) prices set by law or regulation and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the Cost Accounting Standards clause by reason of Section 331.30(b) of Title 4 Code of Federal Regulations (4 CFR 331.30(b)).

Note: (1) Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted his Disclosure Statement to a Government Administrative Contracting Officer (ACO) he may satisfy that requirement by certifying to the Contractor the date of such Statement and the address of the ACO.

(2) In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to his Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of his Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in paragraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the Cost Accounting Standards Board in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by his subcontractors.

(e) The terms defined in Section 331.20 of Part 331 of Title 4, Code of Federal Regulations (4CFR 331.20) shall have the same meanings herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two firms not associated with each other or such Contractor or subcontractor, providing (1) the solicitation to all competing firms is identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted." (ASPR 7-104.83)

101. LOCAL AFFIRMATIVE ACTION PLAN (1972 DEC) (REVISED)

(a) As used in this clause:

(1) "Hometown Plan" or "Plan" means the formal agreement among contractors, unions, and minority representatives described in the solicitation from which this contract resulted;

(2) "the covered area" means the geographical area described in the solicitation from which this contract resulted;

(3) "Director, OFCC" means the Director, Office of Federal Contract Compliance, United States Department of Labor, or any person to whom he delegates authority; and

(4) "minority" means Negro, Spanish-surnamed American, Oriental, and American Indian, and includes both men and women.

(b) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, he shall include in each such subcontract exceeding \$10,000 the provisions of this clause and any applicable minority manpower utilization goals under this contract, which shall be adopted by his subcontractor, who shall with regard to his own employees and subcontractors be bound thereby to the full extent as if he were the Contractor.

(c) If the Contractor is signatory to the Plan either individually or through an association, his affirmative action program shall be in accordance with the Plan. In such case,

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paragraphs (a), (b), (c), (l) and (m) of this clause shall apply. However, to the extent that the Contractor, or any subcontractor at any tier, employs construction trades that are not covered by the Plan, all of the provisions of this clause shall apply. For the purposes of this paragraph (c), construction trades shall be considered not covered by the Plan: (i) if the Contractor violates a substantial requirement of the Plan or ceases to be signatory thereto; (ii) if the Director, OFCC, determines that the Plan is no longer an acceptable affirmative action plan; (iii) if the employing subcontractor is not or ceases to be signatory to the Plan, either individually or through an association; (iv) if the construction trade is not one of the trades participating in the Plan; or (v) if the construction trade, though participating, is not subject to a specific goal for minority manpower utilization and has not been exempted from such a goal by the Director, OFCC.

(d) If the Contractor is not signatory to the Plan, his affirmative action program shall be in accordance with this clause. However, if the Contractor subsequently becomes signatory to the Plan, his affirmative action program shall be in accordance with the Plan, subject to the provisions of Paragraph (c) above.

(e) The Contractor shall make good faith efforts to meet at least the minimum minority manpower utilization goals set forth in the solicitation from which this contract resulted. These goals constitute a commitment of the manhours of employment and training of minority workers the Contractor will undertake in each construction trade as a percentage of the total manhours to be worked in that construction trade on all of the Contractor's construction work in the covered area during the term of this contract. The percentage of manhours for minority employment and training shall be substantially uniform throughout the term of this contract for each construction trade and for all projects. Minority employees or trainees shall not be transferred from employer-to-employer or from project-to-project for the sole purpose of meeting minority manpower utilization goals.

(f) Minority manpower utilization goals shall be satisfied, whenever possible, by employment of qualified minority journeymen; *provided*, however, that the Contractor shall comply with the "Apprentices and Trainees:" clause of this contract;

(g) In order for the nonworking training hours of trainees to be counted in meeting the minority manpower utilization goals, such trainees must be employed by the Contractor during the training period, the Contractor must have made a commitment to employ the trainees at the completion of their training, and the trainees must be trained pursuant to established training programs which must be the equivalent, with respect to the nature, extent and duration of training offered, of the training programs provided for in the Plan.

(h) The Contractor shall take affirmative action to increase his minority manpower utilization, which action shall be least as extensive and as specific as the following steps:

(i) Notify community organizations that the Contractor has employment opportunities available and maintain records of the organizations' response.

(ii) Maintain a file of the names and addresses of each minority worker referred to him and what action was taken with respect to each such referred worker. If such worker was neither sent to the union hiring hall for referral, nor employed by the Contractor, the Contractor's file should document this fact and the reasons therefor.

(iii) Promptly notify the Director, OFCC, when any union with whom the Contractor has a collective bargaining agreement has not referred to the Contractor a minority worker sent by the Contractor, or the Contractor has other information that the union referral process has impeded him in his efforts to meet his goal.

(iv) Participate in training programs in the area, especially those funded by the Department of Labor.

(v) Disseminate his EEO policy within his own organization by including it in any policy manual; by publicizing it in company newspaper, annual report, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; by posting of the policy; and by specific review of the policy with minority employees.

(vi) Disseminate his EEO policy externally by informing, and discussing it with, all recruitment sources; by advertising in news media, specifically including minority news media; and by notifying, and discussing it with, all subcontractors and suppliers.

(vii) Make specific and constant personal (both written and oral) recruitment efforts directed at all minority organizations, schools with minority students, minority recruitment organizations and minority training organizations, within the Contractor's recruitment area.

(viii) Make specific efforts to encourage present minority employees to recruit their friends and relatives.

(ix) Validate all man specifications, selection requirements, tests, etc.

(x) Make every effort to provide after-school, summer and vacation employment to minority youths.

(xi) Develop on-the-job training opportunities and participate and assist in any association or employer-group training programs relevant to the Contractor's employee needs consistent with his obligations under this Local Affirmative Action Plan clause.

(xii) Continually inventory and evaluate all minority personnel for promotion opportunities and encourage minority employees to seek such opportunities.

(xiii) Make sure that seniority practices, job classifications, etc., do not have a discriminatory effect.

(xiv) Make certain all facilities and company activities are non-segregated.

(xv) Continually monitor all personnel activities to ensure that his EEO policy is being carried out.

(xvi) Solicit bids for subcontracts from available minority subcontractors engaged in the trades covered by his commitment, including circulation of minority contractor associations.

(i) The Contractor shall not, in any event, utilize the goals, timetables or affirmative action steps in such a manner as to cause or result in discrimination against any person on account of race, color, religion, sex or national origin.

(j) The Contractor shall be deemed to have met his commitment to the minority manpower utilization goals if he has not denied equal employment opportunity and if his minority manpower utilization rate meets the goals on the total of all of the Contractor's work in the covered area. The minority manpower utilization of subcontractors shall not be considered in determining whether the Contractor has met the minority manpower utilization goals. The Contractor shall not be found to be in noncompliance with the obligations of the affirmative action plan solely because of failure to meet the applicable minority manpower utilization goals. In the event of such a failure, the Contractor shall be given the opportunity to demonstrate that he has instituted all of the affirmative action steps specified in (h) above and has made every good faith effort to make these steps work toward the attainment of the goals, all to the purpose of expanding minority manpower utilization on all his projects in the covered area. If the Contractor meets the goals or if he can demonstrate that he has made every "good faith" effort to meet those goals, no formal sanctions or proceedings leading toward sanctions shall be instituted unless it is otherwise determined that he is not providing equal employment opportunity. If the Contractor has failed to comply with the requirements of the Executive Order 11246, as amended, the implementing regulations, or his obligations hereunder, action will be taken to impose such sanctions as may be appropriate under the Executive Order and the regulations. When the Government proceeds with such formal action, it has the burden of proving that the Contractor has not met the requirements of his commitment hereunder, but proof of the Contractor's failure to meet the goals shall shift to him the requirement to come forward with evidence to show that he has met the "good faith" requirements of his commitment. It shall be no excuse that a union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.

(k) In the event that any work or activity under this contract takes place in a year later than the latest year for which an acceptable range of minority manpower utilization was provided in the solicitation from which this contract resulted, the goals for said latest year shall apply.

(l) The Contractor, and his subcontractors at any tier, shall not enter into any subcontract or subcontract modification subject to Executive Order 11246 of September 24, 1965, as amended, with any person or firm debarred from, or who has been determined not to be a "responsible" bidder for, Government contracts and federally assisted construction contracts pursuant to the Executive Order. The Contractor, and his subcontractors at any tier, shall carry out such sanctions and penalties for violation of the Equal Opportunity clause of this contract, including suspension, termination and cancellation of existing subcontracts, as may be imposed or ordered by the Director, OFCC. The Contractor, or his subcontractors at any tier, shall be deemed to be in noncompliance with this clause, the Equal Opportunity clause, and Executive Order 11246, as amended, for any failure to carry out such sanctions and penalties.

(m) The Contractor shall keep records and file reports relating to the provisions hereof as may be required by the Government. (DPC #75-1, 30 Jul 1975)

102. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (1976 MAY)

(a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee

or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the contractor's noncompliance with the requirements of this clause, action for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance. (ASPR 7-103.28)

103. CLEAN AIR AND WATER (1975 OCT)

(Applicable only if the contract exceeds \$100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c) (1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or the contract is not otherwise exempt.)

(a) The Contractor agrees as follows:

(i) to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

(ii) that no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing;

(iii) to use his best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and

(iv) to insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph (iv).

(b) The terms used in this clause have the following meanings.

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor, subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

(7) The term "nonexempt contract or subcontract" means a contract or subcontract of more than \$100,000 which is not otherwise exempted pursuant to the EPA regulations implementing the Air Act and Water Act (40 CFR 15.5), as further implemented in ASPR 1-2302.4 or in FPR 1-1.2302-4 (whichever is applicable) and the procedures of the Department awarding the contract. (ASPR 7-103.29)

104. EQUITABLE ADJUSTMENTS: WAIVER AND RELEASE OF CLAIMS (7-76)

(a) Whenever the contractor, after receipt of notification of a change made pursuant to the clause of this contract entitled "Changes" or after affirmation of a constructive change thereunder, submits any claim for equitable adjustment under that clause, such claim shall include all types of adjustments in the total amounts to which that clause entitles the contractor, including but not limited to adjustments arising out of delays or disruptions or both caused by such change. Except as the parties may otherwise expressly agree, the contractor shall be deemed to have waived (i) any adjustments to which it otherwise might be entitled under the aforesaid clause where such claim fails to request such adjustments, and (ii) any increase in the amount of equitable adjustments additional to those requested in its claim.

(b) Further, the contractor agrees that, if required by the Contracting Officer, he will execute a release, in form and substance satisfactory to the Contracting Officer, as part of the supplemental agreement setting forth the aforesaid equitable adjustment, and that such release shall discharge the Government, its officers, agents and employees, from any further claims, including but not limited to further claims arising out of delays or disruptions or both, caused by the aforesaid change.

105. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (1976 JUL)

(This clause is applicable pursuant to 41 C.F.R. 60-250, if this contract is for \$10,000 or more.)

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 USC 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the Contracting Officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d) and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(h) As used in this clause:

(1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job

categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings as are compensated on a salary basis of less than \$25,000 per year. This term includes full time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

(2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.

(i) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Veterans Readjustment Act, hereinafter referred to as the "Act" (38 U.S.C. 2012).

(j) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the Contracting Officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance. (ASPR 7-103.27)

106. ADMINISTRATION OF COST ACCOUNTING STANDARDS (1975 MAR)

For the purpose of administering Cost Accounting Standards requirements under this contract, the Contractor shall:

(a) Submit to the cognizant Contracting Officer a description of the accounting change and the general dollar magnitude of the change to reflect the sum of all increases and the sum of all contracts containing the Cost Accounting Standards clause (7-104.83(a)):

(i) for any change in cost accounting practices required to comply with a new Cost Accounting Standard in accordance with paragraphs (a)(3) and (a)(4)(A) of the clause of this contract entitled *Cost Accounting Standards* within sixty (60) days (or such other date as may be mutually agreed to) after award of a contract requiring such change;

(ii) for any change to cost accounting practices proposed in accordance with paragraph (a)(4)(B) of the clause of this contract entitled *Cost Accounting Standards* not less than sixty (60) days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or

(iii) for any failure to comply with an applicable Cost Accounting Standard or to follow a disclosed practice as contemplated by paragraph (a)(5) of the clause of this contract entitled *Cost Accounting Standards* within sixty (60) days (or such other date as may be mutually agreed to) after the date of agreement of such noncompliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within sixty (60)

days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a)(i), (ii), or (iii) above.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the clause of this contract entitled *Cost Accounting Standards*.

(d) Include the substance of this clause in all negotiated subcontracts containing the clause entitled *Cost Accounting Standards*. In addition, include a provision in these subcontracts which will require such subcontractors, within thirty (30) days after receipt of award, to submit the following information to the Contract Administration Office cognizant of the subcontractor's facility.

(1) Subcontractor's name and subcontract number.

(2) Dollar amount and date of award.

(3) Name of Contractor making the award.

(4) A statement as to whether the subcontractor has made or proposes to make any changes to accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards clause unless such changes have already been reported. If award of the subcontract results in making a Cost Accounting Standard(s) effective for the first time, this shall also be reported.

(e) In the event an adjustment is required to be made to any subcontract hereunder, notify the Contracting Officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this contract, as appropriate, based upon the adjustment established under the subcontract. Such notice shall be given within thirty (30) days after receipt of the proposed subcontract adjustment, and shall include a proposal for adjustment to such higher tier subcontract or prime contract as appropriate.

(f) When the Cost Accounting Standards clause and this clause are included in subcontracts, the term "Contracting Officer" shall be suitably altered to identify the purchaser. (ASPR 7-104.83(b))

SECTION 3A

14: ALTERATIONS: (10-76) (CONSTRUCTION CONTRACT)

The Labor Standards Provisions (11-75) are hereby modified as follows:

In the table of contents under 3 APPRENTICES AND TRAINEES delete (1975 AUG) and substitute (1976 OCT) therefor.

PROVISIONS 3 APPRENTICES AND TRAINEES (1975 AUG) is hereby deleted and new PROVISION 3 APPRENTICES AND TRAINEES (1976 OCT) attached hereto is substituted therefor.

3. APPRENTICES AND TRAINEES (1976 OCT)

(a) Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph (b) of this clause, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor shall furnish written evidence of the registration of his program and apprentices as well as of the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. "Apprentice" means a person employed and individually registered in a bona fide apprenticeship program registered with the United States Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Council to be eligible for probationary employment as an apprentice.

(b) Trainees shall be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. "Trainee" means a person receiving on-the-job training in a construction occupation under a program which is approved but not necessarily sponsored by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Employment and Training Administration to insure that the training meets adequate standards.

(c) The Contractor shall make a diligent effort to hire for performance of work under this contract a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the contract the applicable ratio as set forth in paragraph (c)(6) of this clause.

(1) The Contractor shall assure that twenty-five percent (25%) of such apprentices or trainees in each occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (i) the availability of training opportunities for first year apprentices, (ii) the hazardous nature of the work for beginning workers and (iii) excessive unemployment of apprentices in their second and subsequent years of training.

(2) The Contractor shall, during the performance of the contract, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of paragraphs (c) and (c)(1) of this clause.

(3) The Contractor shall maintain records of employment on this contract by trade of the number of apprentices and trainees, apprentices and trainees in first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen. In addition, the Contractor who claims compliance based on the criterion set forth in paragraph (4)(ii) of this clause shall maintain such records of employment on all his construction work in the same labor market area, both public and private, during the performance of this contract.

(4) The Contractor will be deemed to have made a "diligent effort" as required by paragraph (c) if during the performance of this contract, he accomplishes at least one of the following three objectives: (i) the Contractor employs under this contract a number of apprentices and trainees by craft, at least equal to the ratios established in accordance with paragraph (6) of this clause, or (ii) the Contractor employs, on all his construction work, both public and private, in the same labor market area, an average number of apprentices and trainees by craft at least equal to the ratios established in accordance with paragraph (6) of this clause, or (iii) the Contractor (A) if covered by a collective bargaining agreement, before commencement of any work on the project, has given written notice to all joint apprenticeship committees, the local U.S. Employment Security Office, local chapter of the Urban League, Workers Defense League, or other local organizations concerned with minority employment, and the Bureau of Apprenticeship and Training Representatives, U.S. Department of Labor for the locality of the work; (B) if not covered by a collective bargaining agreement, has given written notice to all of the groups stated above, except joint apprenticeship committees, and will in addition notify all non-joint apprenticeship sponsors in the labor market area; (C) has employed all qualified applicants referred to him through normal channels (such as the Employment Service, the Joint Apprenticeship Committees, and where applicable, minority organizations and apprentice outreach programs who have been delegated this function) at least up to the number of such apprentices and trainees required by paragraph (6) of this clause; (D) notice, as referred to herein, will include at least the Contractor's name and address, job site address, value of the contract, expected starting and completion dates, the estimated average number of employees in each occupation to be employed over the duration of the contract work, and a statement of his willingness to employ a number of apprentices and trainees at least equal to the ratios established in accordance with paragraph (6) of this clause. A copy of this notice shall be furnished to the Contracting Officer upon request.

(5) The Contractor shall supply, to the Contracting Officer, and to the Secretary of Labor, a report at three month intervals during performance of the contract and after completion of contract performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen.

(6) The applicable ratios of apprentices and trainees to journeymen in any occupation for the purpose of this clause shall be as follows: (i) In any occupation the applicable ratio of apprentices and trainees to journeymen shall be equal to the predominant ratio for the occupation in the area where the construction is being undertaken, set forth in collective bargaining agreements, or other employment agreements, and available through the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor for the locality of the work. (ii) For any occupation for which no ratio is found, the ratio of apprentices and trainees to journeymen shall be determined by the Contractor in accordance with the recommendations set forth in the Standards of the National Joint Apprentice Committee for the occupation, which are on file at offices of the U.S. Department of Labor's Bureau of Apprenticeship and Training. (iii) For any occupation for which no such recommendations are found, the ratio of apprentices and trainees to journeymen shall be at least one apprentice or trainee for every five journeymen.

November 1975

LABOR STANDARDS PROVISIONS
(Construction Contract)

(Provisions 1 through 8 are those prescribed by the General Services Administration in Standard Form 19-A, November 1972 Edition as amended pursuant to the latest revisions of the Armed Services Procurement Regulation.)

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November 1975

- LABOR STANDARDS PROVISIONS (Construction Contract)

(Provisions 1 through 8 are those prescribed by the General Services Administration in Standard Form 19-A, November 1972 Edition as amended pursuant to the latest revisions of the Armed Services Procurement Regulation.)

1. DAVIS-BACON ACT (40 U.S.C. 276a to a-7) (1972 FEB)

(a) All mechanics and laborers employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations (29 CFR, Part 3)), the full amounts due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) The Contractor may discharge his obligation under this clause to workers in any classification for which the wage determination decision contains:

(1) Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Regulations (29 CFR, Part 3); or

(2) Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrevocably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of, bonafide fringe benefits contemplated by the Davis-Bacon Act, or by any combination thereof. Contributions made, or costs assumed, on other than a weekly basis shall be considered as having been constructively made or assumed, during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and the Contractor pays a cash equivalent or provides an alternative fringe/benefit, he shall furnish information with his payrolls showing how he determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where the Contractor provides a fringe benefit different from any contained in the wage determination, he shall similarly show how he arrived at the hourly rate shown therefore. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(c) The assumption of an enforceable commitment to bear the cost of fringe benefits, or the provision of any fringe benefits not expressly listed in section 1 (b) (2) of the Davis-Bacon Act or in the wage determination decision forming a part of the contract, may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by the Contractor. The Secretary of Labor may require the Contractor to set aside assets, in a separate account, to meet his obligations under any unfunded plan or program.

(d) The Contracting Officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics, including apprentices and trainees, to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(e) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (i) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (ii) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned by the Government thereby.

(f) Paragraphs (a) through (e) of the clause shall apply to this contract to the extent that it is (i) a prime contract with the Government subject to the Davis-Bacon Act or (ii) a subcontract also subject to the Davis-Bacon Act under such prime contract. (ASPR 7-602.23 (a) (ii))

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION (40 U.S.C. 327-333) (1973 APR)

Note: This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) The Contractor shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this contract to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the Contractor's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of \$10 for

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each calendar day on which such employee was required or permitted to be employed on such work in excess of eight (8) hours or in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by paragraph (a). (ASPR 7-602.23 (a) (ii))

3. APPRENTICES AND TRAINEES (1975 AUG)

(a) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with the State Apprenticeship Agency recognized by the bureau; or if the person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or the State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification employed on this contract shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph (b) of this clause or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

(b) Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen employed on this contract shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and not participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the Classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws the approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) The utilization of apprentices, trainees and

journeymen under this part shall be in conformity with the equal employment opportunity requirements of this contract.

4. PAYROLLS AND BASIC RECORDS (1969 JUN)

(a) The Contractor shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve them for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Contractor has obtained approval from the Secretary of Labor as provided in paragraph (c) of the clause entitled "Davis-Bacon Act," he shall maintain records which show the commitment, its approval, written communication of the plan or program to the laborers or mechanics affected, and the costs anticipated or incurred under the plan or program.

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. Weekly submission of the "Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) shall satisfy the requirement for submission of the above statement. The Contractor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits which is required by paragraph (c) of the clause entitled "Davis-Bacon Act."

(c) The Contractor shall make the records required under this clause available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. (ASPR 7-602.23 (a) (iv))

5. COMPLIANCE WITH COPELAND REGULATIONS (1964 JUN)

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) which are incorporated herein by reference. (ASPR 7-602.23 (a) (v))

6. WITHHOLDING OF FUNDS (1972 FEB)

(a) The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor so much of the accrued payments or advances as may be considered necessary (i) to pay laborers and mechanics, including apprentices and trainees, employed by the Contractor or any subcontractor on the work the full amount of wages required by the contract, and (ii) to satisfy any liability of any Contractor for liquidated damages under the clause hereof entitled "Contract Work Hours and Safety Standards Act—Overtime Compensations."

(b) If any Contractor fails to pay any laborer or mechanic including any apprentice or trainee employed or working on the site of the work, all or part of the wages required by the contract, the

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Contracting Officer may, after written notice to the Government, Prime Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased. (ASPR 7-602.23 (a) (vi))

7. SUBCONTRACTS (1972 FEB)

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act--Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination--Debarment" in all subcontracts. The term "Contract" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor." (ASPR 7-602.23 (a) (vii))

8. CONTRACT TERMINATION--DEBARMENT (1972 APR)

A breach of the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act--Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance With Copeland Regulations," "Withholding of Funds," and "Subcontracts" may be grounds for termination of the contract, and for debarment as provided in 22 CFR 5.6 (ASPR 7-602.23 (a) (viii))

9. LISTING OF EMPLOYMENT OPENINGS (1975 JUN)

(This clause is applicable pursuant to 41 CFR 50-250 if this contract is for \$10,000 or more.)

(a) The Contractor, to provide special emphasis to the employment of qualified disabled veterans and veterans of the Vietnam era, agree that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed by excluding those of independently operated corporate affiliates, shall be offered for listing at the appropriate office of the State employment service system wherein the opening occurs and to provide reports to such office regarding employment openings and hires as may be required.

(b) Listings of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment service or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. Listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants referred by the employment service system. Nothing contained herein is intended to relieve the Contractor from any requirements in any Executive Order or regulation regarding nondiscrimination in employment.

(c) (1) Reports required shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local State employment service office or, where the Contractor has more than one establishment in a State, with the central office of the State employment service. Such

reports shall indicate for each establishment (i) the number of individuals who were hired during the reporting period, (ii) the number of those hired who were disabled veterans, and (iii) the number of those hired who were non-disabled veterans of the Vietnam era. The Contractor shall maintain copies of the reports submitted until the expiration of one year after final payment under the contract, during which time they shall be made available, upon request, for examination by any authorized representatives of the Contracting Officer or the Secretary of Labor.

(2) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, he shall advise the employment service system in each State wherein he has establishments, of the name and location of each such establishment in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State employment service system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when he is no longer bound by this contract clause.

(3) If the contract is with a State or local government, the procedures set forth in subparagraphs (1) and (2) of this paragraph (c) are not required.

(4) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(5) This clause does not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangements for that opening.

(f) As used in this clause:

(1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings which are compensated on a basis of less than \$18,000 per year. This term includes full-time employment, temporary employment of more than three (3) days' duration, and part-time employment.

(2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment officers with assigned responsibility for serving the area of the establishment where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" and "rehire" lists.

(4) "Openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement"

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means employment openings for which no consideration will be given to persons outside of a special hiring arrangement, including openings which the Contractor proposes to fill from union hiring halls, which is part of the customary and traditional employment relationship existing between the Contractor and representatives of his employees.

(5) "Disabled veteran" means a person entitled to disability compensation under laws administered by the Veterans Administration for disability rated at thirty percent (30%) or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in line of duty.

(6) "Veteran of the Vietnam era" means a person who was discharged or released within the 48 months preceding his application for employment covered under this part and who (i) served on active duty for a period of more than 180 days, any part of which occurred after August 5, 1964, and was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty for service-connected disability if any part of such duty was performed after August 5, 1964.

(g) The Contractor agrees to place this clause (excluding this paragraph (g)) in a subcontract directly under this contract provided, such subcontract is for \$10,000 or more. (Subcontracts for personal services are exempted from this requirement.)

(h) Failure of the Contractor to comply with the requirements of this clause result in termination of default of the contract concerned. (ASPR 7-602.49)

10. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (1958 SEP)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute. (ASPR 7-104.4)

11. DISPUTE CONCERNING LABOR STANDARDS (1965 JAN)

Disputes arising out of the labor standards provisions of this contract shall be subject to the "Disputes" clause except to the extent such disputes involve the meaning of classifications of wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of the contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor. (ASPR 7-603.26)

12. LABOR RELATIONS (6-72)

It is the Contractor's responsibility to maintain satisfactory labor relations with his employees. Representatives of the Contracting Officer will not participate in labor relations matters unless disputes develop that interfere with the proper performance of the contract, at which time the representative may endeavor to assist in settling the difficulty or may refer the matter to the Federal Mediation and Conciliation Service or the Commander, Naval Facilities Engineering Command for appropriate action.

13. MINIMUM WAGE RATES AND OTHER LABOR STANDARDS (6-72)

(a) The Contractor shall pay mechanics and laborers employed or working directly upon the site of the work wage rates not less than those determined as prevailing by the Secretary of Labor and contained in the wage determination decision that is attached to this specification or addendum thereto. In the event of any difference between the Contractor and the Government concerning the proper wage rates to be paid, the classification of employees to conform to prevailing practice, the amount of wages due employees, or any other application or interpretation of the labor standards provisions in this contract, the differences shall be referred to the Contracting Officer who shall determine the matter with advice from the Secretary of Labor as required by Department of Labor regulations.

(b) Investigation of Labor Conditions. The wage determination decision of the Secretary of Labor attached hereto or included by amendment is made a part of this contract for the purpose of setting forth the minimum hourly wage rates required to be paid by the Davis-Bacon Act. The rates set forth in the wage determination are no warranty that labor will be available at these rates. Bidders are advised to make their own investigation to determine local labor conditions.

SECTION 4A

Special Paragraphs

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SECTION 4ASpecial Paragraphs1. FORMS

Standard Form 22, October 1969 edition, Supplement to Standard Form 22, and Invitation for Bids, Standard Form 20, January 1961 edition, shall be observed in the preparation of bids. Bidders shall affix their names and return addresses in the upper left corner of bid envelope. Envelopes containing bids must be sealed.

2. BID GUARANTY

Bid guaranty will be required as stipulated on the reverse side of Standard Form 20.

3. ITEMS OF BID

Bids shall be submitted in duplicate, on Standard Form 21, December 1965 edition; Bid Form, with Standard Form 19B, Representatives and Certifications, October 1969 edition, and in accordance with Standard Form 20 and 22, upon the following items:

	<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total</u>
Item 1	21623 sq.ft. (Masonry)	Two coat Painting of Main Warehouse and Firewalls on Roof.	\$ _____	
	6110 sq.ft.(Trim)		\$ _____	\$ _____
Item 2	9225 sq.ft. (Masonry)	Two coat Painting of Warehouse Annex	\$ _____	
	724 sq.ft.(Trim)		\$ _____	\$ _____
Item 3	365 sq.ft. (Masonry)	Priming and two coat Painting of Bottle Storage Shed and Steel Lumber Storage Shed	\$ _____	
	7164 sq.ft.(Trim)		\$ _____	\$ _____

4. EVALUATION OF BIDS

The sum total of Items 1, 2, and 3 will be the basis for evaluating bids. The quantities given are for the purpose of evaluating bids only, and there is no guarantee actual or implied, that the Government requires services in the quantity given in the bid schedule.

The Government reserves the right to perform any of the services included in the bid schedule with its own employees.

5. TELEGRAPHIC MODIFICATIONS OR WITHDRAWAL OF BIDS,

in accordance with Section 2A, Clause 7, may be made. Telegraphic modifications or withdrawal of bids should be identified as follows:

"Telegraphic Modificaiton of Bid for Painting of Warehouse Facility and Other Related Structures, Specification

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and forwarded immediately to the office to which the written bids were submitted.

6. REFERENCE TO AMENDMENTS

Each bidder shall refer in his bid to all amendments to this solicitation in accordance with Clause 29 of Section 2A to this contract; failure to do so may constitute an informality in the bid and be cause for rejection of the bid.

7. AVAILABILITY OF SPECIFICATIONS, STANDARDS AND DESCRIPTION

Specifications, standards and descriptions in this solicitation are available as indicated below:

(a) Unclassified Federal, Military and other specifications and standards (excluding commercial) and data item descriptions: Submit request on DD Form 1425 (Specifications and Standards Requisition) to:

Commanding Officer
Naval Publications and Forms Center
5801 Tabor Ave.
Philadelphia, Pa. 19120

The Department of Defence Index of Data Item Description (TD-3) may be ordered on the DD Form 1425. The Department of Defense Index and Specifications and Standard (DODISS) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. When requesting a specification or standard, the request shall indicate the title, number, date and any applicable amendment thereto by number and date. When DD Form 1425 is not available, the request may be submitted in letter form, giving the same information as listed above and the solicitation or contract number involved. Such request may also be made to the Activity by Telex Number 834295, Western Union Number 710-670-1685 or Telephone, Area Code 215-697-3321 in case of urgency.

(b) Commercial Specifications, Standards and Descriptions: These specifications, standards, and descriptions are not available from Government sources. They may be obtained from the publishers.

(c) Availability of specifications and standards not listed in DODISS, Data Item Descriptions not listed in TD-3 and Plans, Drawings, and other pertinent documents: The specifications, standards, plans, drawings, descriptions and other pertinent documents cited in this solicitation may be obtained by submitting request to:

Public Works Officer

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Requests should give the number of the solicitation and the title of the specification, standard, plan, drawing or other pertinent documents requested, exactly as cited in this solicitation. The drawings included with this specification are full scale and are provided at no cost.

8. AVAILABILITY OF UTILITY SERVICES

Electric and water service will be made available to the contractor at the nearest available existing outlet at prevailing Government rates which may be obtained upon application to [REDACTED]. The Contractor will be required to furnish all labor, equipment and materials to make utilities connections and to furnish and install valves, transformers, and meters for each service. The contractor shall determine that each source is adequate and suitable for the requirements of his equipment before making connection and on condition or a condition satisfactory to the Public Works Officer. No guaranty of any kind is made as to the continuity and level of the supply of such utility services. They will be reduced or suspended as the needs of the Government require and the Government shall not be liable for any damages sustained as a result of such reduction or suspension, nor for any failure of the supply lines to the contractors connections. Unless specified otherwise in this Section entitled "Special Paragraphs" final connections to existing utilities shall be made by the Contractor under the direct supervision of Government personnel.

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9. OFFICE OF THE CONTRACTOR

The contractor shall maintain an office or place of business with complete telephone service. Such office or place of business shall be manned during all normal working hours, and at any other time when work is in progress. Telephone service shall be toll free or authorized to accept collect calls from the Public Works Officer or his designated Representatives, for the ordering of work or for any other purposes in connection with the work.

10. BILLING AND PAYMENT

Request for payment in triplicate, may be submitted once per calendar month. Each request for payment shall include all work performed and shall be quoted as a total percentage completed to the date of billing. Any disagreement as to percentage completed shall be resolved by accepting the contracting officer's decision. A ten percent retention of payment shall apply to any partial payments made prior to final completion and acceptance by the Government. Such retention is in accordance with provisions of Clause 7, Section 3A of this contract.

DIVISION 1 - DETAIL REQUIREMENTS

Section 1 - Field Painting

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DIVISION 1 - DETAIL REQUIREMENTS

Section 1 - Field Painting

1. GENERAL

Materials and method of application shall conform to the applicable requirements of the manufacturers specifications, except as specified herein. This specification covers the preparation for and application of two coats of exterior oil based or latex finish, ready mixed paint conforming to TT-P-24D, together with any and all work necessary for adequate exterior surface protection.

2. SCOPE

The work shall include:

- a) Brush down and/or sand exterior surfaces to remove flaking or peeling paint.
- b) Remove rust from all metal surfaces and prime prior to applying paint.
- c) Apply two coats of oil based or latex exterior concrete and masonry paint to approximately 31,213 square feet of surface area. Color should be eggshell white.
- d) Apply two coats of deck gray enamel paint to all exterior trim, doors, doorway overhangs and loading platform roof. The total area to be painted is approximately 13,998 square feet.

3. APPLICABLE DOCUMENTS

The following publications of the issues listed below, but referred to elsewhere by basic designation only, form a part of this specification to the extent indicated by the references thereto (where a number is suffixed to the specification number, it denotes the effective amendment to the specification):

Federal Specifications

TT-P-24D - Paint, oil, concrete and masonry, exterior, eggshell finish, ready mix.

TT-P-645 - Primer, paint, zinc - chromate, alkyd type

Military Specifications

MIL-P-1532BC - Primer (Wash.) Pretreatment Blue (Formula #117-B for metals)

MIL-P-14504A - Primer, coating, pretreatment, one-package wash primer (for steel, aluminum and magnesium).

4. MATERIALS

Materials shall be delivered to the job site in manufacturer's original unopened containers, with the brands, date of manufacture, and name clearly marked thereon.

All materials shall be carefully handled and stored to prevent inclusion of foreign materials, or subjection to sustained temperatures exceeding 90 degrees fahrenheit.

5. SAMPLING AND TESTING

Sampling and testing of paints as specified hereinafter shall be provided. Paints proposed for use shall be sampled from material delivered to the job site and tested by a recognized, independent testing laboratory approved by the Public Works Officer, at the Contractor's expense. Paint proposed for use shall be stored on the project site in sealed and labeled containers, sufficiently in advance of need to allow a minimum of ten (10) days for testing. Upon notification by the contractor that the material is at the site, a one-quart sample of each batch shall be obtained by random selection from the sealed containers by the Public Works Officer. Adequate mixing prior to sampling shall be accomplished to insure a uniform, representative sample. A batch is defined as that quantity of material processed at one time and identified by a number on the label. Samples shall be clearly identified by designated name, specification number, batch number, project contract number, intended use and quantity involved. Testing shall include all test specified in the standard specification for the paint and any requirements specified herein, specifically including pigment and vehicle, and quantitative and qualitative requirements for mixed paint. Manufacturer's certification will be acceptable as a substitute for the testing cited above.

6. PREPARATION OF EQUIPMENT

All brushes, rollers, spraying equipment, and paint pots to be used for paint application should be thoroughly clean, dry, free from contaminants, and suitable for intended use.

7. PREPARATION OF CONCRETE AND MASONRY

All concrete and masonry surfaces shall be thoroughly scraped and/or sanded to remove separating or peeling paint. The surface shall then be thoroughly washed to remove dirt.

Proper removal of surface contaminants is essential for the maximum performance of a coating. The selection of the method for surface preparation is dependent on the type of contaminant and condition of the surface. Dirt, fungus, grease, and oil can be removed by washing the surface with a solution composed of two (2) to eight (8) ounces of trisodium phosphate per gallon of hot water, and then rinsing thoroughly with fresh water. Efflorescence can be removed by scraping, wire brushing, and washing with five (5) to ten (10) percent by weight, solution of muriatic acid and then washing thoroughly with fresh water, removing all traces of the acid. The trisodium phosphate and muriatic acid solutions should be within the ranges stated and should be of strengths to perform their functions properly.

Ferrous surfaces to be painted shall be solvent cleaned to remove oil and grease, and mechanically cleaned by powered wire brushing or surface blasting to remove rust, mill scale, and other foreign substances. Minor amounts of residual rust that cannot be removed except by thorough blast cleaning will be allowed to remain. Primer paint shall be applied as soon as practicable after cleaning.

Metal surfaces to be painted, including aluminum, brass, copper, and zinc coated surfaces and unprimed steel and iron surfaces, immediately after being cleaned shall be given one coat of pretreatment coating conforming to MIL-P-15328 or MIL-P-14504 applied to a dry film thickness of 0.3 to 0.5 mil. Zinc-coated surfaces to be painted shall be cleaned with mineral spirits and wiped dry with clean, dry cloths prior to application of the pre-treatment coating. Primer paint conforming to specification TT-P-645 shall be applied over pretreatment coating as soon as practicable after the coating has dried.

9. THINNERS

Thinner shall not be permitted on the job site unless written permission for thinning has been given by the Contracting Officer. Thinning shall not relieve the contractor from obtaining complete hiding.

10. WORKMANSHIP AND APPLICATION

Workmanship and application shall be first class in every respect. Paint and enamel finish shall be applied carefully with good clean brushes, approved rollers, or approved spraying equipment. All first coat applications to masonry and metal surfaces shall be made using brushes to insure complete and proper coverage of all surfaces painted. Second coats may be applied with rollers of approved spray painting equipment. The work shall be conducted as to avoid damage of other surfaces and public and private property in the area; any damage thereto shall be made good by the contractor at his expense. Sufficient time shall be allowed between coats to assure thorough drying, and each coat shall be in proper condition before the next coat is applied; sanding and dusting, as necessary to produce finishes free of visible defects when viewed from a distance of five (5) feet shall be performed. The finished surfaces shall be free from runs, drops, ridges, sags, waves, laps, brush marks and variations in colors. Each coat of paint shall be of sufficient thickness to cover completely the previous coat or surface. Exterior paint shall not be applied during foggy, damp, or rainy weather; the temperature shall be above 45 degrees fahrenheit and not over 95 degrees fahrenheit. Paint shall not be applied when the surface is not in proper condition for painting.

11. CLEANING

All paint cloths, rags, and cotton waste shall be removed from the premises after each days work. Cloths, rags and cotton waste which are not destroyed shall be placed in closed metal containers and stored a minimum distance of twenty-five (25) feet from all buildings. Paint and painting materials to be stored at the site will be stored in an area to be designated by the Public Works Officer. Upon completion of the work, all staging, ladders, scaffolding, paint and other materials shall be removed from the site. Existing and new paint spots, oil stains, etc., upon adjacent surfaces shall be removed and the entire job left clean and acceptable to the Public Works Officer. Area will be left in a condition equal to or better than existing prior to the work.